

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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FOREIGN MISSION
BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 11, 2006

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS	Commissioner (NPS)
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS

The transcript constitutes the minutes
from the Public Hearing held on April 11, 2006.

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<u>17481 ANC-3F</u>	
<u>On Behalf of the Republic of Hungary:</u>	
ALLISON PRINCE, ESQ.	14
Pilsbury Winthrop Shaw Pittman	
5450 23rd Street, N.W.	
Washington, D.C. 20015	
<u>On Behalf of the U.S. Department of State:</u>	
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202/895-3501	
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P R O C E E D I N G S

9:48 A.M.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen, let me call to order our 11th of April 2006 public hearing. Actually, I won't be calling a public hearing first. For those that are here for our entire agenda, please note that our first case and our first organizational matter will be calling to order our Foreign Missions BZA. To that let me call us in order, the FMBZA.

My name is Geoff Griffis, Chairperson. Joining me today is Ms. Miller, the Vice Chair. Also representing the National Capital Planning Commission, is Mr. Parsons -- oh, I'm sorry, representing the National Park Service is Mr. Parsons and the Director of the National Capital Planning Commission, Ms. Gallagher, is unable to be with us today. Mr. Etherly, our other Board Member, is also unable to be with us due to illness.

I'm going to skip through some of my more boilerplate openings on this so that we can make up a little bit of time and get into this, but there are several very important aspects that I need to go through.

First of all, all persons that are

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1 planning to address the Board and provide testimony,
2 I would ask several things. You will need to fill out
3 two witness cards. Witness cards are available for
4 you where you entered the hearing room at the table.
5 They should also be available for you at the table in
6 front of us where you will provide that testimony.

7 Two witness cards go to the Court
8 Reporter, who is sitting to my right on the floor.
9 It's an important aspect. The Court Reporter will be
10 creating the official transcript of our proceedings
11 this morning and throughout the entire day. We are
12 also being broadcast live in the Office of Zoning
13 website. Attendant to both of those I ask that people
14 turn off all their cell phones and noise-making
15 devices so that we don't have a disruption of our
16 testimony and/or our transmission of these
17 proceedings.

18 The order of procedure for the Foreign
19 Missions BZA is as follows: first, we will hear the
20 statement and the witnesses of the Applicant. Second,
21 we will hear Government reports attendant to the
22 application and I will go through the list of those.
23 Third, we will hear reports, recommendations from
24 other public agencies that might have put in analysis
25 of this case. Fourth, we will hear the report of the

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1 Advisory Neighborhood Commission. Fifth, we will hear
2 persons in support, and sixth, we will hear persons in
3 opposition. There are time constraints. I won't go
4 through our regulations on that as I don't think we
5 will be touching on the end of our time restraints.
6 I know that we will get through this expeditiously.

7 However, it is very important for everyone
8 that is here today for the Foreign Missions BZA
9 application to understand that this is not a normal
10 hearing as a variance or special exception as many
11 might be familiar. This is, in fact, a rulemaking and
12 what is the difference there. First of all,
13 rulemaking, the FMBZA is not a contested case, as
14 other cases are before the BZA. Therefore, we will
15 hear persons in support and persons in opposition and
16 their testimony. However, there are no parties
17 established in this case and there is no cross
18 examination of witnesses in this.

19 The record will be closed at the
20 conclusion of our hearing today unless, of course, we
21 keep the record open for an inclusion of additional
22 information. We will be very specific if we do keep
23 this record open and what information should come into
24 the record and when it should come into the record.
25 At that point, after receipt of that information, of

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1 course, it should be known and well understood that
2 the record would be closed at that time.

3 The Sunshine Act requires that this Board
4 conduct its hearings in the open and before the
5 public. We do and will enter into Executive Sessions
6 from time to time in order to review our files and
7 also perhaps to deliberate on cases. This is in
8 accordance with our rules, regulations and procedure.
9 It's also in accordance with the Sunshine Act.

10 The decision of the Board in this
11 legislative proceedings must be based exclusively on
12 the record that's created before us today, so we ask
13 that, of course, anything that the Board should
14 deliberate on be put into the record, either orally or
15 in written fashion. We also ask that people present
16 today not engage Board Members in private
17 conversations while the hearing is going on or while
18 we might be on break or recess. Therefore, we won't
19 give any appearance of receiving information off the
20 record.

21 Let me say a very good morning to Ms.
22 Bailey with the Office of Zoning, on my left. Mr.
23 Nyarku, who is with the Office of Zoning on my very
24 far left. Mr. Moy, with the Office of Zoning closer
25 to me; Ms. Rose, with the Office of Zoning is with us

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1 also. And Ms. Glazer, with the Office of Attorney
2 General.

3 At this time, the Board will hear any
4 preliminary matters. Preliminary matters are those
5 which relate to whether a case will or should be heard
6 today, requests for postponements, continuances,
7 withdrawals, whether proper or adequate notice has
8 been provided. I ask that you come forward and have
9 a seat at the table in front of us if you have a
10 preliminary matter for our attention. Let me ask if
11 the staff is aware of any preliminary matters for the
12 Board's attention in this first FMBZA Case 17481.

13 MS. BAILEY: Mr. Chairman, Members of the
14 Board, to everyone good morning. No, the staff does
15 not have any preliminary matters on this first case.

16 CHAIRMAN GRIFFIS: Yes sir.

17 MR. WINSTEAD: My name is Frank Winstead.
18 I'm ANC Commissioner 3F-04, 4545 Connecticut Avenue,
19 Apartment 508, Washington, 20008.

20 I have two related matters concerning
21 possible ex parte communications between ANC
22 Commissioner and Chair Griffis.

23 CHAIRMAN GRIFFIS: In this case?

24 MR. WINSTEAD: In Case 17481.

25 CHAIRMAN GRIFFIS: Excellent. Go ahead.

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1 MR. WINSTEAD: In preparing for this
2 matter, I am ANC 3F-04, I was looking at the email
3 account for our ANC office and I came across an email
4 from Mital Ghandi who is an ANC Commissioner in our
5 ANC, to griffisd@verizon.net; info@dcozdcgov.org; cc
6 to ANC-3F at juno.com which is our office account and
7 also cc'd to allison.prince@pilsburylaw.com.

8 The content of the email is "Geoff, good
9 talking to you today. Attached, please find a letter
10 in support of the Hungarian Embassy. I will fax it to
11 the Office of Zoning at 202/727-6072 as per your
12 instructions as well. Thanks, Mital Ghandi, ANC 3F-
13 05."

14 And then included in that is the actual
15 letter and also there is an attachment and work which
16 brings up a related matter. Should I go into that?

17 CHAIRMAN GRIFFIS: What's the related
18 matter?

19 MR. WINSTEAD: The related matter is the
20 clarification on where that letter that Commissioner
21 Ghandi submitted actually came from. When I reviewed
22 the attachment in Microsoft Word, you can go into file
23 properties and look at certain information that is not
24 commonly seen when you print out a document. In that
25 properties field I see author Horn Ashley Dale, Horn

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1 A., company, Pilsbury Winthrop Shaw Pittman, LLP.

2 On subsequent pages, there is -- of the
3 properties -- there is a client number, 542016. I
4 just want to bring it to the Board's attention that
5 the letter from Mital Ghandi appears to have actually
6 originated from Pilsbury Winthrop Shaw Pittman.

7 CHAIRMAN GRIFFIS: Excellent. So the plot
8 thickens.

9 Let me clarify my role in this as you've
10 brought up an ex parte communication and I hope it
11 doesn't touch on, well, let me clarify. Last week, I
12 forget what the date actually was, was the budget
13 hearings for the Office of Zoning and I understand
14 that the entire staff for most of it was down there.
15 I was on my way to the Wilson Building when my cell
16 phone rang and it was identified as Zoning which I
17 assumed was people here. I picked up the phone and I
18 said "hello" and someone said "I need to speak to the
19 Assistant of Mr. Griffis." I said "well, you must
20 have him because here I am, all in one."

21 He introduced himself as Mr. Ghandi and
22 starting talking and I'm not familiar with Mr. Ghandi
23 at all and started talking about this case. And I
24 said "I'm not sure why you got to me." He says he
25 called into the Office of Zoning, they passed him

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1 directly through to my cell phone and there I was
2 talking to him. When he indicated that there was some
3 issue between the ANC on this case, he wanted to
4 submit a letter. I said "well, you need to fax that
5 in." I said you can email through, but you've got to
6 fax it in. I think they need a hard copy in order to
7 print this out and make it an actual submission into
8 the record." I said, "that's all we can do. I know
9 that they'll all be back. Why don't you call back to
10 the Office of Zoning" and that's where it was.

11 How he got my email address, how he got my
12 cell phone number, I'm not sure, except it came from
13 the Office of Zoning. That's the only communication
14 I had. In fact, I was in receipt of this in my -- in
15 the communication of the letter we now have as Exhibit
16 29 which is in the record.

17 I'm happy to take any other questions from
18 you or any other participants. I think we need the
19 representative of the Applicant up here also. I can
20 say unequivocally that this hasn't in any way removed
21 my impartiality in this case and I'm perfectly
22 prepared to continue on this case. If there is any
23 inkling that you don't want me to continue on this
24 case, I'd like to hear from everybody on the Board and
25 I'd be happy to not continue on this case. That will

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1 obviously make this not possible to continue today.
2 We will set this for a hearing and we will have to
3 check with the schedules of the Director of the NCPC
4 and also Mr. Parsons from the Park Service and
5 hopefully, Mr. Etherly will be over his illness at
6 that point.

7 But let me hear from others and we'll get
8 all of this dealt with.

9 Ms. Prince?

10 MS. PRINCE: Allison Prince at Pillsbury
11 Winthrop Shaw Pittman, speaking on behalf of the
12 Republic of Hungary. We have no objection whatsoever
13 to your participation in the case. It was clear to me
14 when I read the same letter that Mr. Winstead
15 presented that there had been communication that I'm
16 sure you did not invite and I have no question that
17 you are not biased in this matter.

18 CHAIRMAN GRIFFIS: Others? Mr. Parsons?

19 MR. PARSONS: Certainly your explanation
20 as to the course of events I see no reason for you to
21 recuse yourself.

22 VICE CHAIR MILLER: I would agree. I
23 think it was accidental communication and I don't
24 perceive any bias of any sort.

25 CHAIRMAN GRIFFIS: I'll return to you with

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1 any further questions, position? Would you like me to
2 remove myself from this case?

3 MR. WINSTEAD: Your explanation is
4 satisfactory to me. I do wish to make sure that the
5 Board is aware of the other related matter with the
6 origin of the actual letter. Thank you.

7 CHAIRMAN GRIFFIS: I think that's
8 understood. Okay. Thank you very much and I
9 appreciate your bringing this to our attention. I
10 think the clarification was good. In fact, it had
11 slipped my mind to even mention that.

12 That being said, any other preliminary
13 matters then? Anything else we need, Mr. Moy, Ms.
14 Bailey?

15 MS. BAILEY: No, Mr. Chairman.

16 CHAIRMAN GRIFFIS: Very well, let's
17 proceed.

18 MS. BAILEY: This is the application and
19 it's of the Republic of Hungary and the number is
20 17481. And it's pursuant to 11 DCMR Section 1002.1
21 and 206(b)(2)(B) of the Foreign Missions Act, to
22 expand and renovate an existing chancery building in
23 the R-1-A and R-5-D Districts at premises 3900
24 Shoemaker Street, N.W., Square 2231; and 2950 Linnean
25 Avenue, N.W., Square 2231, Lot 6.

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1 CHAIRMAN GRIFFIS: Thank you, Ms. Prince.

2 MS. PRINCE: Good morning, Chairman
3 Griffis and Members of the FMBZA. I'm Allison Prince
4 of Pilsbury Winthrop Shaw Pittman. And I'm here today
5 on behalf of the Republic of Hungary. I am here with
6 Imre Helyes, head of the Consular Section for the
7 Embassy of the Republic of Hungary; Lazlo Kovari, the
8 Finance Minister; Alexander Mahey, Assistant to Mr.
9 Kovari; and Nandar Tahetoth, who is an architect and
10 project manager who has come to us today from Hungary.

11 The plans before you involve the
12 renovation of the existing chancery building and the
13 replacement of another building on the site of the
14 Hungarian Embassy. The new building proposed to
15 replace the existing building will serve both
16 consulate and residential functions.

17 The entire project will provide the
18 chancery with a vastly improved appearance, modernized
19 space, and will add a relatively small amount of
20 overall square footage of building area to the site.

21 The existing main chancery building is
22 located in the R-5-D zone. After the chancery was
23 constructed in the mid-1970s, Hungary purchased the
24 single-family house that was located directly adjacent
25 to its existing property. Hungary's site literally

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1 wrapped around the house and therefore its acquisition
2 was logical.

3 Hungary has used the structure as housing
4 for chancery officials for almost three decades.
5 Hungary now proposed a replacement building on the
6 site that will house the consulate and residential
7 apartments.

8 While this portion of the site is zoned R-
9 1-A, the vast preponderance of uses in the area are
10 institutional and chancery in nature and the history
11 of the use building is not as single-family
12 residential. The approval of the proposed plans will
13 not result in the conversion of a house to chancery
14 use, since the building has already been used by the
15 chancery for 30 years.

16 The R-1-A zoned part of the site is also
17 located in the proposed three and slope overlay
18 district that I think Mr. Parsons is especially
19 familiar with. In deference to this proposed overlay,
20 Hungary has reduced the originally proposed amount of
21 impervious surface and introduced a green roof. Also,
22 the landscape plan involves the addition of numerous
23 deciduous trees.

24 Hungary has been highly sensitive to
25 community concerns. The next-door neighbor, Dr.

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1 Sussman, will benefit from the proposed relocation of
2 all existing rooftop mechanical equipment to the
3 southern end of the building from the northern end of
4 the building. He will also benefit from the landscape
5 buffer that he has requested. The neighborhood, in
6 general, will benefit from the project design, the
7 generous landscape plan and the green roof.

8 While the ANC has supported the
9 renovation, it has recommended disapproval of the new
10 building. Yet, it has identified no adverse impacts.
11 It simply notes the building's failure to comply with
12 the tree and slope overlay. The ANC report does not
13 acknowledge the high quality design, the green roof,
14 the landscape plan or the dramatic noise reduction for
15 Dr. Sussman.

16 We urge you to consider all of these
17 factors, as you review this application.

18 If the Board has no questions, I would
19 like to proceed with the testimony of the first
20 witness, Mr. William Geier of Geier Brown Renfro
21 Architects. I believe that Mr. Geier has been
22 qualified as an expert by this Board before, however,
23 in the event that he has not, I have with me today his
24 résumé. He has almost 30 years of experience in
25 architecture.

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1 I would also like to note that I have
2 today slightly revised drawings. The drawings include
3 now the buffer that was suggested by and has now been
4 provided for Dr. Sussman's residence. The drawings
5 include some dimensions that were not included in the
6 set that were in the prehearing statement. And they
7 also show some adjustments to the imperious surface
8 area that were made to be consistent with the spirit
9 and intent of the Forest Hills overlay.

10 CHAIRMAN GRIFFIS: Excellent. Are we
11 getting those into the record now, is that correct?

12 MS. PRINCE: Yes.

13 CHAIRMAN GRIFFIS: And why don't we take
14 the résumé also and establish the expert witness,
15 after review of that.

16 MS. PRINCE: Actually, I jumped the gun.
17 I would like the representative from the Hungarian
18 Embassy to testify before Mr. Geier, Mr. Imre Helyes.

19 CHAIRMAN GRIFFIS: Excellent. Good
20 morning.

21 MR. HELYES: Good morning, ladies and
22 gentlemen. My name is Imre Helyes. I am a consular
23 -- I'm head of the Consular Section of the Hungarian
24 Embassy at this moment, the most senior diplomat at
25 the Embassy and that is the Ambassador himself asked

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1 me to represent this institution before the honorable
2 Board.

3 This application concerns two properties
4 that are currently owned by the Republic of Hungary.
5 The larger of the two properties is 2950 Linnean
6 Avenue, N.W. which is known as Lot 6. It's an L-
7 shaped lot that is the current location of the two-
8 story embassy building that was constructed in the
9 mid-1970s.

10 The smaller property is located 3900
11 Shoemaker Street, N.W., and it abuts the larger
12 property on two sides. This property, which is Lot 3,
13 is improved with a small two-story building that is
14 used as housing for Embassy staff. The Republic of
15 Hungary has owned and used the smaller property since
16 1977. It does not abut any residential property.

17 The properties are located in the square
18 bounding by Tilden Street, Linnean Avenue and
19 Shoemaker Street. They are located just west of Rock
20 Creek Park, near the intersection of Beech Drive and
21 Pierce Mill Road.

22 Lot 6 is located in the R-5-D zoned
23 district which was established in the early 1970s as
24 a part of the planned unit development that approved
25 chanceries for the Government, at that time, of

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1 Czechoslovakia, Hungary, Indonesia and Poland. Lot 3
2 is located in the R-1-A zoned district. The
3 properties are not located in the diplomatic zone, but
4 the surrounding area is largely characterized by
5 diplomatic and institutional users.

6 Our current building was constructed in
7 the mid-1970s and has not been renovated since that
8 time. The building on Lot 3 also was constructed in
9 the 1970s. We plan to renovate the interior of the
10 existing chancery building in order to modernize our
11 facilities. We also plan a modest 500-square foot
12 expansion that will provide a ceremonial entrance for
13 the chancery.

14 The exterior of the building will be clad
15 in new materials to provide a cohesive and updated
16 facade. We will continue to use this building as a
17 chancery. We plan to demolish the existing building
18 on Lot 3 and to construct a new building that will
19 feature four residential units for our staff as well
20 as consulate space.

21 The existing building is dilapidated and
22 unattracted and we plan to replace it with a new
23 building which will harmonize with the renovated
24 chancery and the surrounding area.

25 The consulate will be located in this

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1 building for security reasons. Under guidelines that
2 govern the chanceries of member states of the European
3 Union, consulates need to be located in a building
4 that is separate from the main chancery building. The
5 consulate is a very low-intensity use concerning the
6 movement of clients. It is open only three days a
7 week, Monday, Wednesday and Friday during three hours
8 at each occasion from 10 a.m. to 1 p.m. It receives
9 about 8 to 10 visitors per occasion, Americans and
10 foreigners alike. The visitors to the consulate
11 currently use the only secure entrance into the
12 chancery. This is not an ideal, far from ideal
13 situation from a security standpoint.

14 The new building will provide an entirely
15 separate entrance for consulate visitors.

16 We have tried our best to accommodate the
17 concerns of the community. We have designed the
18 buildings to have the least impact on existing trees
19 on the property. We also reduced the amount of
20 impervious surfacing included in the project by 5
21 percent. In order to address the community's concerns
22 about the amount of impervious surfacing, we have also
23 redesigned a new building to include a green roof.
24 Our landscape architect has worked with Dr. Sussman,
25 who owns the only residence nearby to provide

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1 additional landscaping to screen his property.

2 Our local architect, Bill Geier, has
3 worked with architects from the Republic of Hungary in
4 order to develop a signature design that will
5 compliment the location as well as reflect the unique
6 heritage of our country.

7 We believe this project will result in a
8 complex that is more functional and more aesthetic and
9 we hope that the Board will approve it.

10 Thank you very much for your attention.

11 CHAIRMAN GRIFFIS: Thank you very much.

12 MS. PRINCE: If the Board has no
13 questions, I'd like to proceed with the testimony of
14 William Geier and you should have his résumé there.
15 I would like him qualified as an expert witness.

16 CHAIRMAN GRIFFIS: Good. Do we have any
17 comments or opposition to qualify Mr. Geier as an
18 expert witness in architecture? Not noting any
19 advisory comments, we can establish Mr. Geier as an
20 expert witness.

21 MR. MLOTEK: Mr. Chairman, may I be
22 recognized for a second?

23 CHAIRMAN GRIFFIS: Certainly.

24 MR. MLOTEK: Thanks. For the record, I'm
25 Ron Mlotek the legal counsel of the Office of Foreign

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1 Missions at the U.S. Department of State.

2 The reason I am interjecting myself at
3 this point is because I noticed that there is no
4 representative here from NCPC. This poses a potential
5 statutory problem to the proceeding because the
6 Foreign Missions Act expressly states by name or by
7 position two federal representatives that must be a
8 part of any Foreign Missions BZA proceeding. One is,
9 of course, the representative of the Secretary of
10 Interior, who is Mr. Parsons; and the other, the act
11 in express terms says "the Executive Director of
12 NCPC."

13 And my only concern is that we would go
14 through this entire proceeding and then have someone
15 raise an issue that it was not valid or had to be done
16 over. I have a proposed solution to it actually. And
17 that is that rather because we certainly don't want to
18 cause any delay or anything in this proceeding, and
19 it's not likely from where we sit now, we don't see
20 any possibility that anyone could -- would be likely
21 to raise an objection. It's just theoretical
22 possibility at this point.

23 However, I did notice when I came to the
24 hearing room this morning that Mr. Mann from NCPC is
25 present here somewhere. I said good morning to him

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1 when we passed in the hall and he's here, obviously,
2 for the follow-on cases which are not FMBZA cases.
3 And then, of course, Ms. Gallagher, the Executive
4 Director, could then later read the record and
5 participate in the decision, but I think just to do
6 what can be done to minimize what could threaten or
7 jeopardize any outcome of this proceeding.

8 If Mr. Mann could be found and asked to --

9 CHAIRMAN GRIFFIS: Take notes?

10 MR. MLOTEK: Well, at least to be here.

11 I mean he is -- he is an official of NCPC.

12 CHAIRMAN GRIFFIS: Believe me, we had a
13 limited time, but we had a quick discussion on this
14 and having Mr. Mann here with us doesn't satisfy the
15 fact that the Director is charged with the member to
16 sit for the FMBZA. In my reading of it and I believe
17 we had a brief opinion on it, it was not required for
18 an entire full Board to proceed, but rather the
19 participants, those positions and chairs to be filled,
20 are named and are specific. So I don't see how Mr.
21 Mann actually satisfies Ms. Gallagher, the Director,
22 not being here.

23 I don't -- I'm open to understanding that
24 we are required to have all five members here, because
25 that wasn't my reading.

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1 MR. MLOTEK: Just to clarify my point, Mr.
2 Chairman, we don't take the position that all five
3 members have to be here. I mean a quorum, three,
4 would be sufficient, obviously. However, of the
5 three, let's say we were proceeding with three, two of
6 them would have to be individuals named in the
7 statute. The statute doesn't name the other members
8 -- the other three members of the Board who are, as we
9 know, District government appointees to the Board.
10 But the statute does name specifically. Now we've
11 never had this issue arise. It's never gone to Court.
12 We don't have any judicial ruling on it, but we don't
13 want to have a situation where that is called into
14 question.

15 And my thinking was that if Mr. Mann was
16 here, I mean he, at least, he is the official
17 designated NCPC representative on behalf of the
18 Executive Director to the BZA in general. And no one
19 doubts his expertise and familiarity with these
20 members. He's not just a body that someone would
21 throw in. He's intimately familiar with issues. He's
22 also very intimately familiar with the Foreign
23 Missions Act. We deal with him all the time on all
24 sorts of issues.

25 CHAIRMAN GRIFFIS: He's certainly

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1 qualified.

2 MR. MLOTEK: So at least if he were here,
3 even though we don't have a piece of paper designating
4 him for this, it would be better than nothing and at
5 least it would strengthen, it would bolster any attack
6 that would later be -- I notice there's also no
7 Corporation -- I mean Attorney General. Is there
8 someone from the Attorney General?

9 MS. BAILEY: Yes, there is. She just
10 stepped out momentarily.

11 MR. MLOTEK: Oh.

12 CHAIRMAN GRIFFIS: She's going to find Mr.
13 Mann.

14 MR. MLOTEK: Oh.

15 CHAIRMAN GRIFFIS: I don't know where she
16 is. She just stepped out.

17 MR. MLOTEK: All right, well, I just
18 thought I would raise that. It's up for the chair to
19 decide.

20 CHAIRMAN GRIFFIS: Ms. Prince, do you have
21 any opinion on that?

22 MS. PRINCE: I liked Mr. Mlotek's
23 suggestion that Mr. Mann attend the hearing. I
24 believe that Pattie Gallagher can read the record and
25 vote. I certainly don't want to create any kind of

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1 issue for an appeal. I suggest you hear from the ANC
2 on the matter.

3 CHAIRMAN GRIFFIS: Does the ANC have an
4 opinion? You're going to have to come forward and
5 introduce yourself, have a seat at the table.

6 MR. KLIBANOFF: My name is Daniel
7 Klibanoff, ANC 3-F, Vice Chair. And we would at
8 least, we potentially could have an objection to this
9 and would like to at least hear from the Office of the
10 Attorney General before deciding on that, for their
11 interpretation of this.

12 Not being a lawyer, not having had a
13 chance to read through this, I think that would at
14 least be fair.

15 CHAIRMAN GRIFFIS: That's fine. I'll see
16 how familiar the designated OAG is with the Foreign
17 Missions Act. I think Mlotek is more familiar,
18 perhaps, for his opinion.

19 Mr. Parsons?

20 MR. PARSONS: Mr. Chairman, certainly if
21 Mr. Mann was the Acting Executive Director, which he
22 is not, he would be able to slide into this seat
23 without any problem. He is not the Acting Executive
24 Director in Ms. Gallagher's absence and therefore I
25 don't think it would be appropriate for him to sit.

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1 Ms. Prince stole my idea of we have a
2 standard practice on this Board as well as the Zoning
3 Commission that if a member reviews the record, they
4 can participate in the decision and I think that's the
5 appropriate thing for us to do. It's standard
6 practice. We certainly couldn't make a decision
7 today, but that's fine.

8 CHAIRMAN GRIFFIS: Right, I absolutely
9 agree. If Mr. Mann was here, it would be, as I said,
10 perhaps facetiously, but with all sincerity, it would
11 be to just take notes. He would not be able to ask
12 questions or speak and quite frankly, I don't see why
13 we would necessarily burden him to do that. We can
14 get the transcript to Ms. Gallagher and have her
15 participate in deliberation son this.

16 Ms. Miller?

17 VICE CHAIR MILLER: I would just like to
18 take one more look at the statute and Mr. Mlotek, do
19 you have that provision with you? I just want to read
20 it one more time.

21 MR. MLOTEK: Shall I approach?

22 CHAIRMAN GRIFFIS: You want to see it?

23 VICE CHAIR MILLER: Yes.

24 CHAIRMAN GRIFFIS: Okay. Why don't you
25 hand it to Ms. Miller?

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1 We'll take a minute while she reads it.

2 (Off the record.)

3 VICE CHAIR MILLER: Mr. Mlotek, since you
4 are very well versed in this act, I want to ask you,
5 the layers that you talked about performing the
6 functions and one has to go to the function here,
7 could be performed by the NCPC representative reading
8 the record and then voting on it. And my question is
9 is there any requirement with respect to the quorum
10 that the quorum in the FMBZA needs to be comprised of
11 three members, two of which must be federal members?
12 It doesn't go that specific, does it?

13 MR. MLOTEK: Thank you, Ms. Miller, for
14 the Record, the Department of State has never taken a
15 legal position on what that provision means. And just
16 to make the record clear in this case, I was not
17 asserting a position. I was simply pointing out that
18 given that language that you just read in the Foreign
19 Missions Act, and given the absence of the NCPC
20 Executive Director, a legal question could be raised.
21 I mean that's what lawyers are trained to is, is to
22 spot potential legal issues that could be raised. And
23 if it was raised, it could be raised in such a way as
24 to undermine the validity of whatever outcome this
25 Board arrives at.

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1 So the Department of State does not have
2 a position. Your reading of it certainly is a very
3 reasonable one and my position now would be if that is
4 the disposition of the Board, then perhaps you should
5 -- I don't know if you could take a vote on it or at
6 least take your positions on the record so that it
7 will be in the record and you know, if in the very
8 unlikely event that it should ever be pursued in some
9 judicial forum, then at least you will, as the
10 administrative tribunal, you will at least have
11 established a record that you acted reasonably, you
12 considered the issue and you came to a reasonable
13 conclusion.

14 So I do not challenge or question your
15 conclusion, your reading of it.

16 CHAIRMAN GRIFFIS: And you clearly brought
17 up, you haven't brought up a position, but rather
18 brought up the issue and I think having that before
19 us, we now have all gotten copies well dog eared of
20 our Foreign Missions Act. It is very clear in
21 membership, that is required to be constituted in the
22 FMBZA.

23 There is, in my reading no direct
24 direction, no direct letter indicating what a quorum
25 or how that one would participate. That, I would say,

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1 in consistency with our fashioned procedure we would
2 go back to what creates a quorum for our own
3 constitution of the BZA. And it is very clear and we
4 had this discussion in Executive Session before coming
5 out and we state again that we have a quorum to
6 proceed and to call to session and in fact, make
7 decisions.

8 I think my position would be and I'd hear
9 from other Board Members that based on the fact to be
10 absolutely cautious that we would provide the record
11 to Ms. Gallagher, the Executive Director of NCPC for
12 her deliberation and participation in the decision of
13 this, on this case.

14 We are under time constraints also, of
15 course, so we will have to make sure that we can, in
16 fact, meet those. Let me hear from others.

17 Ms. Miller?

18 VICE CHAIR MILLER: After taking a look at
19 the statute and listening to the opinions on it, I
20 believe that it could be met by Ms. Gallagher reading
21 the record and then voting on it.

22 I also just want to throw out the
23 suggestion if perhaps it would give the community more
24 comfort, Mr. Mann is here. If he could just come out
25 here and not participate, but listen.

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1 CHAIRMAN GRIFFIS: I think that raises
2 more questions than potential controversies and
3 conflict. The Foreign Missions Act is clear on one
4 important piece, who the members are that sit here.
5 I think that that could actually rise into a level of
6 issue if anyone wanted to make an issue out of it,
7 that why was he participating or even being passing
8 notes to us, funny jokes or not. I don't think we
9 need that to cloud the issue.

10 VICE CHAIR MILLER: Okay.

11 CHAIRMAN GRIFFIS: Mr. Parsons?

12 MR. PARSONS: I agree.

13 CHAIRMAN GRIFFIS: Okay, anything else
14 then?

15 VICE CHAIR MILLER: No.

16 CHAIRMAN GRIFFIS: Does anyone disagree
17 with those opinions? Yes?

18 MR. KLIBANOFF: The ANC would at least
19 note that portion read into the record so we're
20 familiar with what it says as we proceed through this.

21 CHAIRMAN GRIFFIS: What portion?

22 MR. KLIBANOFF: That deals with the
23 membership and who sits.

24 CHAIRMAN GRIFFIS: Who's got the best
25 voice? We can make a copy of it for you and just --

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1 VICE CHAIR MILLER: The provision that
2 we're address is, it says: "Whenever the Board of
3 Zoning Adjustment is performing functions regarding an
4 application by a Foreign Mission with respect to the
5 location, expansion or replacement of a chancery, (a)
6 the representative from the Zoning Commission shall be
7 the Director of the National Park Service or if
8 another person has been designated under paragraph 1
9 of this subsection, the person so designated; and (b)
10 the representative from the National Capital Planning
11 Commission shall be the Executive Director of that
12 condition."

13 CHAIRMAN GRIFFIS: And that is Section 406
14 of paragraph i of 22 U.S.C. 406.

15 MR. MLOTEK: 4306.

16 CHAIRMAN GRIFFIS: What did I say?

17 MR. MLOTEK: You said 406.

18 CHAIRMAN GRIFFIS: You're exactly right.

19 MR. MLOTEK: 4306, subsection i.

20 CHAIRMAN GRIFFIS: I. Okay, anything
21 else?

22 Are you ready for us to proceed?

23 MR. KLIBANOFF: We may have an objection.
24 It sounds like that calls for in the performing
25 functions of this body of the FMBZA --

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1 CHAIRMAN GRIFFIS: It does not. It says
2 that the designated member would be. It has nothing
3 to do with a quorum or functioning a quorum to order
4 or any of the actual procedural functionings of the
5 FMBZA.

6 MR. KLIBANOFF: Okay, we soon may have an
7 objection to that once we can take a better look at
8 it.

9 VICE CHAIR MILLER: I just want to clarify
10 that I think that interpretation of that provision is
11 at least the way we're applying it, is performing a
12 function, would be fulfilled by Ms. Gallagher reading
13 the record and voting on the application, as if often
14 the case when a Board Member is absent from a hearing.

15 CHAIRMAN GRIFFIS: Anything else? You had
16 another question?

17 MR. KLIBANOFF: No, that was it.

18 CHAIRMAN GRIFFIS: That was it. Okay.
19 Very well, then I think we're ready to proceed.

20 Ms. Prince, we'll begin with Mr. Geier?

21 MS. PRINCE: Mr. Geier.

22 CHAIRMAN GRIFFIS: Indeed. I'm sorry,
23 one more -- is Mr. Sussman present? Dr. Sussman? He
24 is, okay. I just wanted to clarify, of course, you
25 put in a request for party status and obviously I hope

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1 that you understood in my opening remarks that we
2 don't establish parties in this case, but we will hear
3 from you at the appropriate time when I call for
4 persons to provide testimony.

5 DR. SUSSMAN: Do you have any idea when
6 the appropriate e--

7 CHAIRMAN GRIFFIS: I'm sorry, you just
8 need to turn your microphone on.

9 DR. SUSSMAN: Do you have any idea when
10 the appropriate time would be?

11 CHAIRMAN GRIFFIS: I will call you,
12 hopefully, it will be in a matter of moments.

13 DR. SUSSMAN: Okay, because I could
14 truncate this very simply.

15 CHAIRMAN GRIFFIS: Indeed. Thank you very
16 much.

17 Okay, Ms. Prince, let's move ahead then.

18 MR. GEIER: Good morning, my name is
19 William Geier. I reside at 5109 Manning Place, N.W.
20 in Washington. I'm the local architect of this
21 project which was designed by a Hungarian architect,
22 A&D Studio. They were selected by the Hungarian
23 government through a design competition in the Year
24 2004.

25 These two Boards that I have up indicate

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1 the site of the project and has already been
2 described. It's east of Connecticut Avenue off of
3 Tilden Street overlooking Rock Creek Park. The board
4 on the right, on the board on the right I have some
5 photographs which were taken coming down Tilden Street
6 showing the various embassies that surround the
7 project as well as Ms. Sussman's house which is
8 indicated in the lower left-hand photo, Letter E.

9 CHAIRMAN GRIFFIS: Can you point to it in
10 context in that also?

11 DR. SUSSMAN: May I be heard?

12 CHAIRMAN GRIFFIS: No, well --

13 MR. GEIER: For the record, Mr. Sussman's
14 house is here.

15 CHAIRMAN GRIFFIS: You're pointing to the
16 context board and I think the Board can note on the
17 context board, Mr. Geier is indicated that as listed
18 it is private residence and it actually shows, this
19 photograph at Triangle E which is, of course, bonded
20 to the photograph.

21 MR. GEIER: Yes. This is Tongo, Tunisia,
22 Kuwait, Czech Republic.

23 CHAIRMAN GRIFFIS: Okay.

24 MR. GEIER: These two photos, photos L and
25 M are of the existing building which was built in the

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1 mid-1970s. It's a concrete frame building with
2 exposed concrete floor slabs, otherwise known as
3 spandrels. They're about 18 inches deep. And they
4 are white painted concrete. The spandrel sections are
5 then in-filled with both pre-cast concrete, bush-
6 hammered, kind of ribbed like heavy-duty corduroy in-
7 filled panels and aluminum windows, anodized aluminum
8 windows.

9 On this lot, number 6, we meet the FAR
10 requirements, the percentage of the lot occupancy and
11 rear yard requirements, but we're seeking a variance
12 for a nonconforming sideyard and a special exception
13 for a setback requirement for the roof structure.

14 The other lot 3, which as Mr. Helyes
15 explained, was purchased by the embassy in 1977, as an
16 existing two-story wood-framed house, it's about 2700
17 square feet and it will be replaced, demolished and
18 replaced with a new building, three stories, about
19 8800 square feet. The first floor will be consulate
20 office function and then there would be four
21 residential units above.

22 On this lot 3, we meet the minimum lot
23 area requirements, percentage of lot occupancy
24 requirements and height requirements, but are seeking
25 variances for rear yard, side yard and parking. Of

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1 course, two of these lots are in the diplomatic
2 overlay zone.

3 The site slopes up from the corner of
4 Linnean to Shoemaker Street.

5 This is the low point of the site.
6 Stepping up to the north and to the west.

7 Going to site improvements, there are 14
8 existing trees which will be removed, but they will be
9 replaced with 44 new trees. There's an existing chain
10 link fence. That's going to be removed and replaced
11 with a 7-foot high ornamental fence.

12 The new building is separate as Mr. Helyes
13 has explained, because of security regulations as
14 members of the European Union, we've become familiar
15 with these so-called Schengen guidelines and they're
16 not allowed to have the consulate in the same building
17 as the chancery.

18 In addition to the Schengen regulations,
19 for separating the consulate, the other reasons for
20 the project were to upgrade the comfort and efficiency
21 of the occupants, really to improve the life safety
22 requirements of the building.

23 (Pause.)

24 These are two photos -- is this on? These
25 are two photos taken of the existing site on which

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1 we've superimposed a perspective of the new building.
2 You can see the site is currently heavily wooded.
3 This is the existing single-family home that will be
4 demolished and this is the concrete frame, pre-cast
5 structure of the existing consulate building behind.
6 This indicates the new building with the consulate on
7 the ground floor, two apartments on either side above.

8 I brought the materials with me this
9 morning. Mr. Helyes explained the reason for the
10 renovation was to bring this building into the 21st
11 century and as members of the European Union, were
12 using modern European and technology. The reason the
13 system is not very familiar in the United States.
14 There are only a handful of buildings built with this
15 cladding system. It's called the ventilated rain
16 screen system. The weather proofing is placed upon
17 the structure and then separated by several inches.
18 There's actual an open airspace in the cladding
19 materials, are not sealed, but rather, there's a small
20 gap so that fresh air can ventilate behind that, come
21 up at the bottom up and through and makes for a more
22 energy-efficient building.

23 The materials that we'll be using are
24 these two types of Italian porcelain tiles which have
25 a striated effect on the surface, it's got a matte

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1 finished, as well as a pre-patina copper material.

2 And we can see that in these elevations of
3 the new building. This would be the darker gray
4 material. The apartment units being clad in this pre-
5 patina copper material. And here, we're hoping
6 especially in the summer months when the trees are in
7 bloom that this building will blend in very well with
8 nature, rather than the shiner copper which takes 20
9 plus years to form this patina. The building will be
10 built with the patina on the material.

11 This is an elevation of the renovation of
12 the existing building. One of the architectural
13 features that will be of architectural interest is
14 developing, again, as Mr. Helyes explained, a small,
15 500 square foot addition on the south side which will
16 be called the protocol entrance and while that has
17 been -- that's a two and a half story space which then
18 becomes part of the new pumphouse and discussions with
19 Dr. Sussman, the existing building has pumphouses now
20 in three locations. The main one here, which is
21 closest to Mr. Sussman's property, another one in the
22 middle and a third one over this mechanical equipment
23 into this central pumphouse which is one of the
24 reasons we're seeking relief that was spread out in
25 three locations in the existing and now it's

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1 consolidated. But we can't because of the size of the
2 equipment and we can't meet the setback.

3 We've also hired an acoustical engineer
4 and he is developing recommendations for how you
5 achieve the aligning of the interior of that penthouse
6 room to further reduce the sound that comes from the
7 noise of the equipment.

8 And in these perspectives, you can see the
9 new building versus the existing building. We've
10 attended the February and March meetings of the ANC
11 and heard their concerns. One of the things we did at
12 that time was to change the roofs and there are
13 actually three roofs on this building. There's the
14 two roofs over the apartment blocks and then in
15 between the two apartment blocks, there's a hard paved
16 area, landscaped area of terrace for the residences
17 which actually was partially roofed over the ground
18 floor consulate.

19 So there's a roof, one, two and three in
20 between them. We've changed those from hard surfaces
21 to green roofs. So the original scheme that we
22 presented to the ANC in February had about 65 percent
23 impervious surface on this Lot 3. After talking with
24 them we were able to reduce to about 60 percent by
25 eliminating some of the exterior paving materials

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1 which do not reduce the size of the building because
2 of the functional requirements of the program
3 requirements of the embassy. But having built green
4 roofs, we actually now have reduced the amount of hard
5 surface material on that lot to 22 percent.

6 It doesn't strictly comply with quote
7 impervious materials because the absorbed water
8 eventually will still run off, but we have gone from
9 56 percent hard paved to 22 percent hard surface.

10 CHAIRMAN GRIFFIS: Excellent, so on Lot 3,
11 22 percent of the area is?

12 MR. GEIER: Still hard material.

13 CHAIRMAN GRIFFIS: Not green?

14 MR. GEIER: Not green.

15 CHAIRMAN GRIFFIS: Right.

16 MR. GEIER: In terms of the heights, the
17 existing chancery two stories was 37 feet, 6 inches
18 tall to the penthouse. The new one is a little bit
19 higher. We've increased it about three and a half
20 feet. It's 41 feet high.

21 CHAIRMAN GRIFFIS: In that area I would
22 say it's the enclosure for the HVAC systems and
23 they're taking three locations, putting it into one,
24 surrounding it. A better location you're asserting
25 and you are acoustically dealing with it.

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1 There's talk about that there's -- well,
2 my direct question is where is not meeting the setback
3 requirement?

4 MR. GEIER: In this direction. This is a
5 view looking this way.

6 CHAIRMAN GRIFFIS: Correct.

7 MR. GEIER: Going from Linnean Street. So
8 it does not meet the 1 to 1 on this side. It probably
9 does on the north side, but not on the south side.

10 CHAIRMAN GRIFFIS: I see.

11 MR. GEIER: So in other words, right here.

12 CHAIRMAN GRIFFIS: And on that rendered
13 elevation that you've just pointed to, on the left
14 side of that, that's what you're calling your
15 architectural embellishment that rises up to the front
16 that meets the penthouse structure?

17 MR. GEIER: Yes. Here is actually the
18 entry.

19 CHAIRMAN GRIFFIS: I see.

20 MR. GEIER: It's a ceremonial entrance, a
21 protocol entrance off of Linnean Street. It takes you
22 directly into the ballroom.

23 CHAIRMAN GRIFFIS: So what we have here is
24 the penthouse actually engaging this architectural
25 embellishment which is part of the tower element that

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1 defines the entrance to the building?

2 MR. GEIER: Right. And working with the
3 Commission of Fine Arts, the original scheme that the
4 Hungarian architects had proposed was much more
5 exuberant. The Commission of Fine Arts was not happy
6 with that, so we went back with a more simple approach
7 which they approved. And that's this scheme here.

8 CHAIRMAN GRIFFIS: Interesting. Kind of
9 piques my curiosity to see the first.

10 MR. GEIER: More Frank Garrish.

11 CHAIRMAN GRIFFIS: Okay. There it is.
12 Anything else?

13 MR. GEIER: Unless there are question.

14 VICE CHAIR MILLER: I'm just curious.
15 From what I -- little I know about green roofs, I
16 understand there are different levels and I'm
17 wondering what level or standard green roof is going
18 to be.

19 CHAIRMAN GRIFFIS: You were wondering if
20 this was a lead certification?

21 VICE CHAIR MILLER: That's what I mean,
22 yes.

23 CHAIRMAN GRIFFIS: I haven't heard any
24 mention of that. Is that any sort of certification
25 that you're looking for in this green roof?

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1 MR. GEIER: No, we're not.

2 CHAIRMAN GRIFFIS: Okay.

3 MR. GEIER: I can get you the technical
4 information on the types of materials and all of that.

5 VICE CHAIR MILLER: I was just curious.
6 Thank you.

7 MR. PARSONS: Is there going to be a
8 presentation by the landscape architect?

9 MS. PRINCE: Yes, there will be. He's
10 next.

11 If there are no further questions about
12 the architecture, we'll proceed with the testimony of
13 Mr. Bob Goode of Stephenson and Goode. He has been
14 qualified as an expert in landscape architecture by
15 many different bodies, but not by this Foreign
16 Missions Board. I do not have his résumé with me. He
17 has 30 years of experience. He's a Fellow in the
18 American Society of Landscape Architects. He
19 graduated from Cornell. He has a master's from
20 Michigan. If there's no objection, I would like him
21 admitted as an expert.

22 MR. PARSONS: No objection.

23 CHAIRMAN GRIFFIS: Any comments,
24 questions? Any objections? Very well, you can
25 proceed. I want to -- before we move too far away

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1 from the architecture, because I didn't want to quash
2 the question I think that was coming about the green
3 roof, but do you want to give a quick description of
4 the functionality of it or why we even care that it is
5 or not? Does this filter water? What does this do
6 for us?

7 MR. GEIER: Yes, it does act as a filter
8 and essentially what green roofs do is slow the rate
9 of runoff, but they don't hold water -- it depends on
10 the length and intensity of the storm. So it will
11 hold water for a limited period of time, but that's
12 why you cannot count it as totally impervious surface
13 in the technical or civil engineering definition of
14 that.

15 CHAIRMAN GRIFFIS: Okay, and why we care
16 about pervious/impervious is what you're getting to.
17 As I understand what you're saying is that if you have
18 impervious it's black top and all this rain comes down
19 and then it's all going to wash away and it picks up
20 all the oils and the contaminants and pollutants and
21 it dumps it into our rivers.

22 MR. GEIER: Right.

23 CHAIRMAN GRIFFIS: So if we can, this
24 green roof conceivably will hold water there that will
25 evaporate back up into the sky.

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1 MR. GEIER: That's right.

2 CHAIRMAN GRIFFIS: Or perhaps it filters
3 through some stones and cleans up a little bit.
4 Certainly doesn't get our oil drippings from the cars,
5 from the parking lot.

6 MR. GEIER: That's right.

7 CHAIRMAN GRIFFIS: Okay, interesting.
8 Fascinating description. Follow-up? Anything else?
9 Great. Let's move ahead then.

10 MR. GOODE: Good morning. I'm Robert
11 Goode, a principal of the landscape architectural firm
12 of Stephenson and Goode. We practice at 916 Prince
13 Street in Alexandria, Virginia and I reside,
14 personally, at 7730 Elber Road in Alexandria,
15 Virginia.

16 I'd like to just very briefly go through
17 the landscape plan with you. It involves really two
18 key aspects. One is the removal of some trees on site
19 in order to facilitate the new program and then
20 replacement landscape plan to both augment the site as
21 it stands now and as a replacement for some of those
22 existing trees that we will be removing.

23 This is the landscape plan overall. This
24 area in here is known as Lot 6 which is the main
25 existing building. Lot 3 is the smaller piece here,

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1 and possibly the one of most concern related to tree
2 removal.

3 There are some existing trees on site
4 around that house. There's one that was dead and
5 there are several that are close to -- they're sort of
6 characteristic extreme as plant material and in
7 particular some Norway spruce that sit right up on
8 this edge. There is at the corner or close to the
9 corner of Shoemaker and Linnean a large American elm
10 about 39 inches in diameter that we are preserving.
11 In fact, we've changed the plan considerably over time
12 to best protect that particular tree.

13 In quantifiable terms for Lot 3, which is
14 here, we are removing about 106 total circumference
15 inches of trees, that's in really three trees: two
16 Norway spruce here and then a saucer magnolia that
17 sits right about in here.

18 For Lot 6, there are some further removal
19 to facilitate this construction between the two
20 buildings. In that case we are removing the total of
21 230 circumference issues or circumference inches.
22 Again, a combination of older deciduous trees, older
23 evergreen trees, some of which have really become
24 pioneered and are growing very close to the foundation
25 of the building.

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1 In replacement in the development of the
2 landscape plan, we are replacing in total 496, close
3 to 500 circumference inches in landscape material at
4 the time it goes in. The trees are, in general, the
5 deciduous trees will be 5 inches in caliber. The
6 evergreen trees and ornamental trees slightly smaller,
7 around 3 inches in caliber.

8 I should point out that this particular
9 plan does not fully show the screening -- I take that
10 back. It is over here on this side. I'm looking at
11 it upside down from I usually look at.

12 There is a line of dense evergreen trees
13 shown between or along the property line between the
14 embassy and Dr. Sussman's house. I did personally
15 meet with Dr. Sussman and walked that boundary to see
16 where the issues were and how we could screen those
17 out. It's actually a fairly simple screening
18 procedure, so that line of trees -- that's what that
19 represents.

20 We are providing a new line of street
21 trees, both on Linnean and Shoemaker where we have the
22 space and as Mr. Geier mentioned, there is a perimeter
23 ornamental fence as part of the security for the
24 embassy and a new hedge line on that as well in
25 replacement for the existing chain link fence that we

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1 are removing.

2 Questions?

3 CHAIRMAN GRIFFIS: Questions?

4 MR. PARSONS: I am not sure which one of
5 you needs to answer this. I don't understand the
6 removal of trees between the two buildings. One, I
7 don't understand the need for a tunnel between these
8 two facilities. They're literally seconds apart from
9 one another. I don't know whether the tunnel is
10 what's causing the removal of these evergreen trees
11 and I'm looking at a tree removal plan -- I don't see
12 it there now, but I'm sure you have L-102. And the
13 two spruce out near the street are a second question.
14 But why is it that all of these trees between the two
15 buildings need to be removed? It looks like terraces
16 and tunnel are the cause of that.

17 MR. GOODE: In part, that is being caused
18 by construction and I can't really speak to the
19 necessity of the tunnel.

20 It's also a matter of some of those trees
21 are either pioneer trees or self-established trees
22 that are growing quite close to the existing building.
23 In fact, branched right up against it.

24 MR. PARSONS: Photograph H.

25 MR. GOODE: Yes, photograph H, you can see

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1 how close these are on that building. This happens to
2 be the saucer magnolia here that I mentioned and
3 they're right up against the face of that, that
4 building.

5 There is a slope there that comes down so
6 they're established on that slope and it was our
7 feeling that given the nature of those trees, their
8 location, both now and in the future, it would
9 reasonable to remove those and replace them with a
10 higher level of landscape.

11 MR. GEIER: I can add. The tunnel is
12 there mainly for security purposes, although it
13 literally is just a few feet away. The only portion
14 of the building that is bullet-proof are the consulate
15 offices, so they wanted a private connection between
16 the two, a secure connection between the two
17 buildings. It's not a very elegant way to approach
18 the building because you'd have to go through the
19 parking garage of the existing building, but it's
20 there for security reasons.

21 I might also add to the question of the
22 trees that Bob pointed out in photograph H, it's our
23 understanding that those trees were added by the
24 Hungarians before they owned Lot 3. So they were
25 there to buffer the new building from the residential

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1 building when the residential owner was still there.

2 MR. PARSONS: So let's go to the two at
3 the street then, at Shoemaker Street. And why they
4 have to be removed?

5 MR. GOODE: There is a grade issue there
6 that's causing that. They are two of a group of three
7 and they are the two lesser of the three. As Bill, as
8 Mr. Geier mentioned, the site does slope up from
9 Shoemaker and in the development of this new building,
10 the finished floor is at a level that slightly cuts
11 into the slope there, so we are showing a low
12 retaining wall, but it is enough construction close
13 enough to those trees, that we didn't feel their
14 survival was terribly likely.

15 MR. PARSONS: You moved the path which was
16 on top of the elm tree roots previously to this side.

17 MR. GOODE: Yes.

18 MR. PARSONS: Why is it necessary for the
19 path to go to this corner of the building now when it
20 went to the other corner?

21 MR. GOODE: The reason first and foremost
22 was to remove construction as far away from that
23 existing elm as we could if we placed a fairly high
24 emphasis on it. It's a very nice tree. We have had
25 it evaluated by an arborist and we had the

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1 recommendations for how to best facilitate that
2 survival in the long term. So we moved all of that
3 pavement and all of that development on that corner
4 away from that existing tree.

5 The other issue was the proximity of that
6 entrance, an ADA facility entrance, away from the
7 corner of Linnean and Shoemaker.

8 MR. PARSONS: I want to now move to
9 stormwater. We've heard about the green roof, but I
10 see no stormwater plan as to where the water from the
11 site is going.

12 MR. GOODE: Do you want to speak to that?

13 MR. GEIER: We are working with A. Morton
14 Thomas and just last week we received their initial
15 survey. There will be a large stormwater structure in
16 between the two buildings. It's not a final design,
17 but it's a preliminary plan. I think I may have
18 brought that.

19 MR. PARSONS: Do you know what type?

20 CHAIRMAN GRIFFIS: Mr. Parsons, do you
21 bring up the question because you think it might
22 impact the landscape plan, is that correct?

23 MR. PARSONS: Well, I was worried about
24 the locatio of it as to whether we were saving trees
25 and then finding we had to remove them later.

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1 MR. GEIER: At the moment, it's planned
2 for this location, but that's not final.

3 All I have with me is the existing site
4 survey. I don't have their proposed scheme yet which
5 needs a lot of work.

6 MR. PARSONS: And that would connect to a
7 stormwater system in the street?

8 MR. GEIER: Yes.

9 MR. PARSONS: Existing stormwater system.
10 Okay.

11 CHAIRMAN GRIFFIS: What's the timing on
12 receiving that, do you know?

13 MR. GEIER: The final?

14 CHAIRMAN GRIFFIS: Or at least a more
15 final.

16 MR. GEIER: We would probably need another
17 month.

18 MR. PARSONS: Well, so will we.

19 CHAIRMAN GRIFFIS: Okay.

20 MR. PARSONS: That's all I have.

21 CHAIRMAN GRIFFIS: Thank you, Mr. Parsons.

22 VICE CHAIR MILLER: I'm not sure if this
23 is for Ms. Prince or for you, but it looks like in the
24 application it says that a portion of the project
25 would require some deviation from the strict

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1 requirement of the overlay. And I'm wondering does
2 that mean that you're seeking some relief from us with
3 respect to excepting you from some requirement of the
4 overlay? And I'm just wondering if you could
5 highlight that, if that's true and the justification
6 for that?

7 MR. GEIER: I'm going to ask our attorney
8 to speak to that.

9 MS. PRINCE: I can address that. The
10 project, as Mr. Geier described, there are certain
11 ways in which it does not meet the zoning regulations
12 strictly and there are certain ways that it does not
13 meet the proposed Forest Hills overlay, so we're
14 seeking deviations from standards, not technical
15 variance of special exceptions. But in presenting the
16 application to you, we've tried to hold ourselves to
17 that standard so that you can better evaluate.

18 We can go through in great detail the ways
19 in which we don't technically comply, for example,
20 with the Forest Hills overlay. I didn't know if you
21 had specific questions.

22 VICE CHAIR MILLER: We were just noting
23 that -- I mean I was looking at your application and
24 basically if it's set out there, we don't necessarily
25 need you to repeat it. If there was anything else

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1 that you wanted to highlight about it, fine.
2 Otherwise, that's what we'll rely on.

3 MS. PRINCE: All the deviations are set
4 forth in the application in detail.

5 VICE CHAIR MILLER: Okay, thank you.

6 CHAIRMAN GRIFFIS: Any other questions?
7 V e r y w e l l , l e t ' s p r o c e e d .

8
9 MR. PARSONS: Is that the final witness?

10 MS. PRINCE: We have one additional
11 witness, if you need to hear from him. We have a
12 sound expert who submitted a report and actually made
13 a presentation to the ANC. His report demonstrates
14 that through the consolidation and relocation of the
15 HVAC and other rooftop equipment, the noise at Dr.
16 Sussman's property line, the northern property line
17 will be reduced by a minimum of 50 percent.

18 I am not sure that he in the room right
19 now if you want to hear from him.

20 CHAIRMAN GRIFFIS: I don't see a need
21 unless others feel -- his report is attached here.

22 MS. PRINCE: It is, it's Exhibit E to our
23 pre-hearing statement.

24 CHAIRMAN GRIFFIS: Excellent. Okay.
25 Anything else?

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1 MR. PARSONS: I did want to ask Ms. Prince
2 a question.

3 CHAIRMAN GRIFFIS: Good.

4 MR. PARSONS: On Lot 3, certainly this
5 kind of structure would not be allowed as a matter of
6 right. It's essentially a zoning change in my
7 estimation.

8 Could you help by arguing that?

9 MS. PRINCE: Yes. As you are aware, under
10 the Foreign Missions Act, chancery use is permitted in
11 the mixed-use diplomatic districts and high-density
12 residential districts and then other neighborhoods
13 that this Board determines are appropriate for
14 chancery use based on the surrounding uses.

15 I believe that the decision has already
16 been made that this site is appropriate for chancery
17 purposes. This lot is surrounded on all sides by
18 either chancery or Park Service property. It's
19 directly across the street from the park and it has
20 chancery use literally on three sides.

21 It has been controlled by Hungary for
22 three decades and has been for chancery purposes,
23 essentially by a number of families that live in the
24 house at any given time.

25 I know that there's always concern from

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1 this Board about precedent. And I would argue that
2 the history of this particular application is so
3 complex that there should be little concern about
4 precedent. This application could not, for example,
5 be used to argue that an R-1-A zone property in the
6 midst of a Kalorama neighborhood or some other
7 neighborhood automatically now should be considered
8 for chancery use. And the reason is because of the
9 zoning background.

10 The predominance of the property is
11 located in the R-5-D zone as a result of a PUD that
12 was processed before the Foreign Missions Act even
13 existed. And I believe that when the diplomatic
14 overlay was adopted, this site logically could have
15 been considered as part of the D overlay, but no one
16 would have thought to do it at the time because the
17 property already had R-5-D zoning with the exception
18 of this little corner.

19 So I believe, based on the zoning history
20 of the property, that nobody really thought about this
21 residual piece and the fact that it would have been
22 appropriate to put in the D overlay.

23 So because of the PUD history, rezoning
24 the majority of the site, 38,000 feet to R-5-D, the
25 fact that this residual piece, although zoned R-1-A is

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1 surrounded on all sides and is, in fact, surrounded 89
2 percent by chancery use within 200 feet, chancery or
3 institutional use, the fact that it's been owned by
4 three decades by Hungary and all those factors weigh
5 in favor of your extending chancery use officially to
6 this property.

7 MR. PARSONS: Now in the PUD, this Lot 3
8 was not part of that, correct?

9 MS. PRINCE: Lot 3 was not part of the PUD
10 because at that time the house was owned by a Mr.
11 Eastman, that's why we call it the Eastman house.
12 That's why the buffer was created between the house
13 and the Hungarian Embassy.

14 However, shortly after the approval of the
15 PUD and the construction of the new building, the
16 property was acquired by the Hungarian Embassy. They
17 didn't go through any process at that point. They
18 began to use it in connection with their purposes. As
19 I said, multiple families have lived in the house.
20 But they've treated it as their own.

21 And I don't -- it's quite an anomalous
22 situation to have this little residual piece of R-5-A
23 zoning in a sea of R-5-D, but that is, in fact, what
24 we ended up with because of the timing of the
25 acquisition.

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1 MR. PARSONS: So it's not the zoning
2 history as you mentioned before, it's more the use and
3 ownership of the lot.

4 MS. PRINCE: Well, it's the zoning history
5 in that -- they're intertwined. Had the Eastman house
6 been owned by the Hungarian Embassy at the time of the
7 original PUD, obviously it would have been folded into
8 that application and we would hope would have been
9 approved as part of that PUD.

10 But it was entirely inappropriate to do it at
11 the time, given the fact that it was still owned as a
12 private residence. And then during this whole interim
13 period of 30 years, no new construction was sought on
14 the property, so we have not come before you. But
15 I've not seen a case quite like this and I've looked
16 at the other cases that involve the extension of
17 chancery use into the R-1 zone, not in the diplomatic
18 overlay and the few times it has been permitted, it
19 appears to have this kind of extenuating surrounding
20 use situation as we have here.

21 MR. PARSONS: Thank you. One more
22 question, Mr. Goode.

23 Mr. Goode, you show a hedge and I'm not
24 sure what it is. It doesn't make a difference, on the
25 outside of the fence that's to be erected. Until we

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1 get to the front of the new building, on Lot 3, where
2 you show no fence or landscape hedge, as I look at L-
3 103.

4 MR. GOODE: With one small addition of an
5 ornamental tree there. The fence line does turn in
6 and the front of the building becomes that defensible
7 perimeter in that particular case and then picks up
8 again and goes around.

9 The reason there is not much landscape
10 shown there again is out of respect for that existing
11 elm and the feeling that there was not a need for a
12 great deal of it. There is a little bit of it right
13 here in this small gap, if you can see it, and a
14 little bit here, but in general, we wanted to do as
15 little as we could within that particular zone, given
16 the nature of that elm tree.

17 MR. PARSONS: So as to -- well, maybe you
18 could go to the image of the photo simulation. That's
19 where my confusion was. I meant these here.

20 (Pause.)

21 Now unfortunately, the image is blocked by
22 his handsome comfort station in the park, the brick
23 structure in the foreground, but it appears as though
24 the fence is going across the front of the new
25 building, but I don't see that in the drawing.

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1 I see it in that drawing, but I don't see
2 it in your landscape drawing.

3 MR. GOODE: If you look, you will see that
4 it actually turns in in the front of the building
5 along there is open -- the fence -- it's the way it's
6 drawn. The fence actually does cut back in.

7 This was, I think, in part also developed
8 around an earlier plan.

9 MR. GEIER: That's before we relocated the
10 entrance.

11 MR. PARSONS: Well, what I'm trying to get
12 to is additional screening of this building from the
13 park. I don't see the need to expose it as much as it
14 is. I'm not the architect, obviously, I'm sure a
15 different point of view, but one ornamental tree out
16 in front doesn't seem to provide any screening, if you
17 will, from this frankly startling building that
18 certainly changes the landscape, as you can see in the
19 upper photograph.

20 I just ask you to think about that a
21 little more and --

22 MR. GOODE: We'd be glad to. Again, I
23 just want to emphasize that this -- you can see it
24 right in the back there, that elm tree is a
25 substantial tree and we're trying to do as little as

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1 possible right around that, but we can look at the
2 possibility of getting a little bit more screening in
3 there.

4 MR. PARSONS: Certainly, yes.

5 MR. GOODE: That elm is a pretty
6 substantial tree.

7 MR. PARSONS: Oh yes, thank you.

8 CHAIRMAN GRIFFIS: Just for my
9 clarification, your question originally was of this
10 photo montage, you're not seeing the shrub line on
11 those drawings?

12 MR. PARSONS: Not as proposed is my point.

13 CHAIRMAN GRIFFIS: Right, okay.

14 MR. PARSONS: If they're surrounding the
15 building with a hedge, on the street face, but when
16 they get to Shoemaker Street facing the park, they
17 don't.

18 CHAIRMAN GRIFFIS: Right. Just on the
19 photo because that is what's proposed, correct, just
20 for my understanding? So these are revised now. I
21 see. It broke. I see.

22 MR. GOODE: Yes, the hedge line comes
23 along and then turns in at this retaining wall and
24 then picks up on this side.

25 CHAIRMAN GRIFFIS: Which is shown on L-101

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1 revised which was submitted today.

2 MR. GOODE: That's correct.

3 CHAIRMAN GRIFFIS: Okay, excellent point,
4 Mr. Parsons.

5 Okay, anything else. Clarifications?
6 Questions? Let's proceed.

7 MS. PRINCE: That completes our
8 presentation.

9 CHAIRMAN GRIFFIS: Thank you very much.
10 Let's move right ahead then. Note that Office of
11 Planning is with us. Let's move to their report.

12 MS. BROWN: Good morning, Mr. Chairman and
13 Members of the FMBZA. I am Maxine Brown Roberts,
14 representing the Office of Planning.

15 As has already been established, Lot 6 was
16 placed in the R-5-D zone, along with a number of
17 chanceries in the vicinity via PUD. Chancery use in
18 the R-5-D district is allowed in accordance with the
19 requirements of the Foreign Missions Act and
20 corresponding sections of the zoning regulations and
21 in particular, Section 1002.

22 Regarding Lot 3, which is in the R-1-A
23 district, the appropriateness of a chancery location
24 is determined on a case-by-case basis. Based on the
25 existing uses in the square and in the area, Lot 3

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1 seems to be an appropriate location for chancery as
2 lot and square surrounded by five other embassies or
3 chanceries and the Republic of China's Education
4 Center and one residence.

5 Regarding the criteria set forth in
6 Section 1002, the Office of Foreign Missions will
7 provide additional information and objectives of the
8 United States to provide adequate and secure
9 facilities to the Republic of Hungary. The property
10 is not within a Historic District, however, the
11 proposal was reviewed by the Commission of Fine Arts
12 and given conceptual approval with further reviewed
13 delegated staff.

14 For the existing chancery use, 19 spaces
15 are required and 24 spaces will be provided. The
16 extra four spaces will be dedicated to the residents
17 on Lot 3. The Office of Planning believes that the
18 on-street parking is sufficient to serve a small
19 number of persons that will visit the site and its
20 limited hours of operation.

21 Regarding the municipal interest, the
22 application is seeking deviation from the side yard,
23 rear yard, parking, roof structure and from the
24 proposed tree and slope overlay.

25 As stated in our report, the Applicant has

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1 demonstrated that reduction in the building envelope
2 of Lot 3 necessitates the reduction in site in rear
3 yards, one on Lot 6, the recladding of the building
4 extends an additional half to a foot into an already
5 reduced sideyard.

6 As stated before, the reduction in parking
7 on Lot 3 is due to security reasons. The proposed
8 reductions will not affect the neighboring properties
9 because the abutting building is within the same
10 property owner. Reduction in side yards will not
11 affect the light and air of both buildings.

12 Regarding parking the relatively small
13 numbers of persons who will visit the site, in
14 addition to limited hours of operation will not
15 negatively affect the neighborhood and therefore the
16 intent of the zone plan will be maintained.

17 Lot 3 is also within the area covered by
18 the proposed Forest Hills tree and slope overlay zone.
19 The small reduction in the side yard requirement will
20 not be detrimental to adjacent building because it has
21 common ownership and the light and the air to the
22 building will not be adversely affected.

23 To mitigate the increase in impervious
24 surface which is caused by the increase in both lot
25 occupancy in side yard and rear yards, the Applicant

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1 has proposed to provide a green roof on the new
2 building in addition to the use of pervious material
3 in those areas that are paved.

4 The removal of trees with a circumference
5 of 39 inches will be compensated by planting
6 additional trees on the site. The landscaping plan
7 for the property shows a great increase in the number
8 of deciduous trees and improved landscaping.

9 The new roof embellishment and roof
10 structure as proposed will house the mechanical
11 equipment that will serve both buildings. The
12 equipment is commonly located in the rear of the
13 building and adjacent resident has requested that it
14 be removed because of the noise which will be reduced
15 in the proposed rooftop location.

16 The roof structure does not meet the one-
17 to-one setback requirement of Section 411. The roof
18 areas has been reconfigured to accommodate the
19 mechanical equipment and will be unable to meet the
20 one-to-one setback.

21 The Applicant is therefore combining the
22 roof structure and the architectural embellishment is
23 one feature.

24 The general purpose and intent of the
25 zoning regulations and map will not be adversely

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1 affected and relocation of the mechanical equipment
2 will help in noise reduction on adjacent properties.

3 The Director of Planning finds that the
4 proposed consulate on Lot 3 and improvements on
5 existing chancery on Lot 6 are compatible with
6 surrounding uses. The proposal requested deviations
7 will not have a detrimental effect on the nearby
8 residential use.

9 Therefore, the proposal is considered to
10 be inadmissible interest subject as it meets the
11 standards established by the zoning regulations.

12 The Office of Foreign Missions will
13 provide additional information on how the federal
14 interest is met in this application. The Office of
15 Planning therefore recommends approval.

16 Thank you, Mr. Chairman.

17 CHAIRMAN GRIFFIS: Excellent. Thank you
18 very much for a very thorough report. We do
19 appreciate it, the conclusions and analysis.

20 Is there any question from the Board?

21 Not noting any questions, let's continue.

22 Mr. Mlotek?

23 MR. MLOTEK: Thank you very much, Mr.
24 Chairman, and may it please his honorable Board. I'm
25 Ron Mlotek, legal counsel for the Office of Foreign

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1 Missions of the U.S. Department of State. And I'm
2 very pleased to be here today to represent the
3 Department and the Secretary of State in this
4 proceeding.

5 I have a number of issues that have to be
6 addressed here. One of them is a procedural type of
7 logistical issue that has to do with the fact that in
8 this case, you probably have noted already, there is
9 no letter, written letter, the customary letter, that
10 comes from my office typically recommending approval
11 and giving our views on the federal criteria among the
12 six criteria that are in the Foreign Missions Act.

13 I have had discussion with staff about
14 this a couple of day sago and it turns about for
15 reasons we don't understand there appears to have been
16 a change in the normal standard operating procedure
17 that the Office of Zoning uses in requesting,
18 notifying the Department of State of an impending case
19 and requesting our views.

20 I have, for the record, I can submit --
21 unfortunately I only brought one copy. I ran out of
22 the office quickly this morning, but I will hand over
23 to staff a copy of a typical letter. This one goes
24 back to 2001 that came from the Office of Zoning,
25 signed by Director Kress. And this letter concerned

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1 the chancery of Latvia on Massachusetts Avenue, a case
2 that was handled by Mr. Collins who is also here in
3 the room today.

4 And this letter, which I will be
5 providing, was addressed to our then Deputy Director
6 of the Office of Foreign Missions --

7 CHAIRMAN GRIFFIS: Let me see if I
8 understand the situation here. There was notification
9 that you're asserting has changed as it comes out of
10 the Office of Zoning, so it didn't get to your desk in
11 a timely manner, so that's why we don't have a letter
12 in.

13 MR. MLOTEK: Right.

14 CHAIRMAN GRIFFIS: I have a little bit of
15 a premonition of this.

16 MR. MLOTEK: Right.

17 CHAIRMAN GRIFFIS: In my opening
18 statement, I said we might leave the record open.

19 MR. MLOTEK: Right.

20 CHAIRMAN GRIFFIS: For additional
21 information.

22 MR. MLOTEK: Right.

23 CHAIRMAN GRIFFIS: It seems to me that you
24 would want to submit a letter, is that correct?

25 MR. MLOTEK: If it's felt, if the Board

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1 feels that it's necessary and we will also talk to the
2 consulate --

3 CHAIRMAN GRIFFIS: I don't think that's
4 really necessary, especially --

5 MR. MLOTEK: And we will do that for the
6 record.

7 CHAIRMAN GRIFFIS: The fact that we're
8 going to provide it in the transcript, the entire
9 record to Ms. Gallagher, that would be --

10 MR. MLOTEK: But I would also like to
11 request, on behalf of the Department of State, that
12 the staff coordinate with us to have this come in the
13 proper format.

14 The one that we got was addressed simply
15 -- well, we didn't get it. Staff emailed me a copy of
16 it on Monday or last week, Friday. And it was simply
17 addressed to the Secretary of State.

18 CHAIRMAN GRIFFIS: Interesting.

19 MR. MLOTEK: And so obviously in a 25,000-
20 employee organization, a letter that comes in to the
21 Department of State, it doesn't mention the Office of
22 Foreign Missions anywhere in it. We don't know how
23 the envelope was addressed. We don't have an
24 envelope, so we never got it.

25 CHAIRMAN GRIFFIS: I was under the

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1 impression we were a small town.

2 MR. MLOTEK: Well, small town, big
3 government.

4 CHAIRMAN GRIFFIS: Well, we'll make sure
5 a lunch gets scheduled, food will be provided by the
6 State Department, you all come together and decide how
7 --

8 MR. MLOTEK: We'll talk about that.
9 That's within the realm of possibility.

10 CHAIRMAN GRIFFIS: Good.

11 MR. MLOTEK: If there are no untoward
12 appearances involved in that.

13 CHAIRMAN GRIFFIS: We'll look at the menu
14 and see if we show.

15 MR. MLOTEK: Right. All right, so I will
16 then now verbally just quickly summarize what would
17 have been in the letter for the record and what will
18 be in the record.

19 And that is that the Department of State
20 does strongly recommend a favorable action by this
21 Board on this case and with respect to the criteria
22 for decision in the Foreign Missions Act in 22 U.S.C.
23 Section 4306(d), there are several criteria there that
24 are for the Secretary of State to give her opinion on,
25 we find the following:

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1 One, that favorable action by the Board in
2 this case to permit the Hungarians to do what they
3 would like to do would, in fact, facilitate the
4 international obligation of the United States, as a
5 whole, to facilitate their acquisition of secure
6 facilities for their embassy.

7 Second, with respect to 4306(d)(3) and
8 (d)(4), there are no special security issues that are
9 raised or necessitated by this proposal or by this
10 chancery at this location. Each one of these cases is
11 reviewed by our security professionals, just for the
12 information of the Board. Each and every case, when
13 we get it, is referred to our colleagues, the Office
14 of Foreign Missions is, in fact, part of the Bureau of
15 Diplomatic Security, and we have colleagues there who
16 are experts on facility protection and they actually
17 go out and review each and every area and each and
18 every proposal. And so they have found there is no
19 special issue that is raised here.

20 Lastly, with respect to 4306(d)(6), the
21 federal interest, typically, in the past and in this
22 case as well, the federal interest is related to the
23 issue of reciprocity, that is the treatment of United
24 States diplomatic facilities in Hungary. I'm pleased
25 to report that we have until now been fortunate to

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1 have the support of the Hungarian national authorities
2 with all of our various property issues in Hungary.
3 We have every expectation that this will continue in
4 the future and we're sure that favorable action by the
5 Board in this case will, in turn, induce the
6 government of Hungary to be forthcoming.

7 We do have one upcoming project, I was
8 informed, that concerns one of our annex buildings in
9 Budapest that is used to house the security guard
10 detachment of the Marine Corps. All of our larger
11 embassies have security guard detachments, United
12 States Marines, a small group, that is stationed under
13 the command of a senior Gunnery Sergeant.

14 And we are looking for another -- to
15 relocate them in Budapest. That would be considered
16 a chancery annex, because they are security personnel.
17 That concludes the findings under the Foreign Missions
18 Act.

19 Finally, I just want to address the very
20 good issue that Mr. Parsons raised about the zoning
21 and how it relates to the Foreign Missions Act and I
22 believe at one point he stated that in effect this was
23 changing a favorable action by the Board would, in
24 effect, change the underlying zoning at this site. I
25 would like to remind the Board that under the Foreign

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1 Missions Act, no action by the FMBZA, although it is
2 a very powerful body, as you know, the exclusive and
3 preclusive tribunal for reviewing these matters, but
4 still in all, no action by the FMBZA could have the
5 effect of changing zoning, so the zoning would not
6 change, regardless of what the Hungarians would build
7 here with your approval.

8 To just give you an example, if this were
9 approved and this building on that one lot which was
10 not in the original PUD, were authorized for chancery
11 use, that would not change the zoning so that in the
12 future a non-chancery occupant, let's say, could just
13 move in there. They couldn't. You would have to go
14 through an entire proceeding and that would be
15 pursuant to the very high standards of variances or
16 special exceptions.

17 Likewise, transfer to another chancery
18 even for -- if the Hungarians -- I mean it's unlikely
19 that in any time in the near future after going
20 through all this expense and trouble, that Hungary is
21 going to move out, but let's just say for example,
22 hypothetically, if 10 years, 20 years, whatever down
23 the road, the embassy should decide to sell all or
24 part or specifically this part that is of concern to
25 some of us here, that one little part that was not

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1 part of the PUD and until now was a residential
2 structure and would be converted to institutional
3 structure, chanceries, and the Embassy of Hungary
4 wished to sell that to another chancery, to another
5 government for use as a chancery, that would likewise
6 have to go before the Board in a regular proceeding,
7 well, a Foreign Missions Act proceeding once again,
8 because it would not be subject to the grandfathering
9 language of the Foreign Missions Act.

10 The grandfathering provision of the
11 Foreign Missions Act, just to remind everyone, it's a
12 very important point as we're now 23 and a half years
13 away from the enactment of the Foreign Missions Act,
14 so we're getting to the point at which the
15 grandfathering provision of the Foreign Missions Act
16 is becoming more and more diluted because so many new
17 chanceries have been built, so many old chanceries
18 have been vacated or left and not continued --
19 recycled into chancery use.

20 Under the grandfathering provision, you do
21 not get any grandfathering right to occupy a chancery
22 which was built or authorized for chancery purposes
23 after 1982. You only -- the only things that are
24 grandfathered are sites that were in chancery use as
25 of October 1, 1982.

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1 So when the FMBZA authorizes either the
2 use of a property in a residential area for chancery
3 use pursuant to the Foreign Missions Act, or the
4 construction, replacement, whatever it is that is
5 being requested of you, and you act favorably upon
6 that and you authorize that action, there is no
7 precedent and no change of zoning that occurs because
8 that decision would be exclusively personal to that
9 government that was the Applicant in the case before
10 you and any other government that would come along
11 down the road would have to go through the whole
12 process again. I just wanted to make that clear.

13 In addition, aside from this one lot,
14 which wasn't in the PUD, the other parts which
15 surround this lot are, as you heard, zoned R-5-D. And
16 under the Foreign Missions Act, all the areas that are
17 zoned R-5-D and R-5-E are presumptively included
18 within what we come today to call the diplomatic
19 overlay, the act doesn't mention the diplomatic
20 overlay. But is considered to be presumptively
21 appropriate for chancery use. In other words, they
22 don't need -- it would be superfluous to map them even
23 into the diplomatic overlay.

24 There was some discussion, my colleague,
25 legal counsel for the embassy mentioned that if it had

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1 been mapped today or perhaps different criteria, it
2 would have been mapped within the diplomatic overlay.
3 Possibly so, but to some extent the surrounding area
4 would have been superfluous to map in it, so it's just
5 this one little portion. And it is, let me remind the
6 Board, it is within the same square, it is within the
7 same zoning square as the parts which are in chancery
8 use and which are zoned R-5-D.

9 So if you did the famous or now infamous
10 one third, two thirds calculation for this square, you
11 would see it would overwhelmingly meet that. So this
12 by no means should this be understood as some sort of
13 grievous departure or injection of a nonresidential
14 use in a residential area because of the configuration
15 of this.

16 And anyway, my final point, we have been
17 pleased to tell the Board, the Department of State, in
18 conjunction with the National Capital Planning
19 Commission, have been in very active consultation over
20 the years through the Foreign Missions Task Force,
21 along with the Office of Planning, about various ideas
22 of changing the way in which areas are deemed to be
23 appropriate, including, as you know, NCPC is on
24 record, and OP is on record, as not liking the one
25 third, two thirds test. They would like to get rid of

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1 it. And in principle, we would be prepared to do that
2 if there were some alternative way to get properties
3 in there.

4 So if we were no longer under the regime
5 of one third, two thirds, this area clearly would be
6 deemed to be appropriate because of the other things
7 that are around there. You wouldn't necessarily look
8 at the square. You would look at street frontage.
9 And you would see that the street frontage, completely
10 around this site and across the street is chancery.
11 That concludes my presentation, unless anyone has
12 questions.

13 CHAIRMAN GRIFFIS: Excellent. Questions?

14 (No response.)

15 Very well, we do appreciate that,
16 especially the last monologue, because there wasn't a
17 lot of dialogue, but we appreciate the information
18 that was given and with that, it's not new territory
19 for the Board, one looking at this, particularly, but
20 also in previous proceedings.

21 Very well. I'll just make note as it's
22 also been noted throughout the presentation, of
23 course, the other agency that had put in an analysis
24 or review of this was historic and that was under the
25 Commission of Fine Arts. It is Exhibit 25 in the

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1 record. It is also mentioned and cited in numerous
2 other submissions with this.

3 That would conclude government agency
4 reports on this. I think we are ready to proceed with
5 the ANC's report.

6 MR. KLIBANOFF: Good morning.

7 CHAIRMAN GRIFFIS: Glad you can still say
8 that.

9 MR. KLIBANOFF: It's getting close to that
10 time, isn't it?

11 CHAIRMAN GRIFFIS: It is and we've got a
12 lot more to do, but take your time.

13 (Laughter.)

14 MR. KLIBANOFF: We will try not to exceed
15 the time allotted.

16 CHAIRMAN GRIFFIS: Not to worry.

17 MR. KLIBANOFF: As I know you have some
18 other cases that you would like to hear after us.

19 You should have a copy of our resolution
20 that I am sure that you have reviewed, so I will not
21 dive too much into the minutia of that.

22 CHAIRMAN GRIFFIS: Excellent, it is
23 Exhibit 27 in the record.

24 MR. KLIBANOFF: One point I would like to
25 make up front is the Commission on Fine Arts did not

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1 notify the ANC as per statute for their hearing, so we
2 were unable to weigh in on that proceeding.

3 Also, as Mr. Mlotek testified earlier, I
4 guess it sounds like there are no great security
5 concerns with this process, so at least to us that
6 makes us question the need for a tunnel for security
7 purposes as part of this application.

8 If there are no great security concerns
9 with it, why would they need to include that which
10 gets to where many of our concerns come which is with
11 the tree and slope overlay. The building of that
12 tunnel is why some of the trees need to be removed.

13 CHAIRMAN GRIFFIS: I'm not sure that's on
14 point with the review that actually goes through in
15 terms of the FMBZA and the security, rather -- but I
16 think I understand your point.

17 MR. KLIBANOFF: Some of the points that I
18 would like to bring up from this, from our resolution
19 is that the impervious surfaces in regards to the R-1-
20 A lot which is a separate property from the R-5-D lot,
21 would be increased to 60 percent for that lot which is
22 what is covered by the tree and slope overlay and that
23 does increase, that exceeds what is allowed by the
24 tree and slope overlay by 20 percent.

25 So when the Applicant speaks as to keeping

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1 with the spirit of the tree and slope overlay, we feel
2 that increasing or exceeding what is allowed by 20
3 percent is definitely on the large side of that.

4 Also, in regards to the tree and slope
5 overlay, it does require an arborist to pronounce dead
6 any trees that they feel are damaged and if they are
7 keeping in spirit with that and we can enter photos of
8 this into the record, if you desire. There was a tree
9 that is listed on their report as being dead.
10 However, the embassy staff did express to us that it
11 was damaged in a storm, saw a crew that was pruning a
12 tree on one of the adjacent properties and had them
13 come the next morning to remove that tree in its
14 entirety which makes us ask did they have time to have
15 an arborist pronounce that dead between an afternoon
16 and the next morning. And is that truly in keeping
17 with the spirit of the tree and slope overlay?

18 Just give me one moment to find my next
19 document.

20 (Pause.)

21 Let's see here. I just wanted to speak to
22 the fact of Lot 6 which is the current chancery. We
23 do not have any objection to what they are building
24 there. They have addressed all of the concerns that
25 we and the neighborhood have had with regards to the

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1 noise and the buffering of the properties to that.

2 Where did I put that card?

3 MS. PERRY: While Daniel is looking for
4 his document, I'd like to interject something. My
5 name is Karen Perry. I'm also from ANC-3F.

6 I think this Board knows over the course
7 of many years in our coming here, we've been
8 complaining about the amount of institutional use and
9 special exceptions in our neighborhood.

10 Now some of those special exceptions are
11 kind of coming back to haunt us. Two thirds, one
12 third, whatever, the two third, one third test with
13 these special exceptions that were granted for
14 institutional use in that area, some of which are
15 really one street away on Upton Street or on Rene and
16 not -- they might be in the square, but they're not
17 near the site.

18 I think one of our prime concerns at our
19 ANC when we were analyzing this was not Lot 6 where
20 the current embassy is and chancery because that was
21 the embassy and chancery per the 1970 PUDs.

22 Our concern is Lot 3 which is a single-
23 family house and all the records I can find in the
24 government do not find -- it might be owned of the
25 government of Hungary, but it was in use as a single-

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1 family house to anybody's knowledge. So I think our
2 concern is that single-family house and expanding
3 institutional or chancery use in the neighborhood and
4 demolishing a house that we fought hard to get a tree
5 and slope overlay on.

6 And the building is designed not like the
7 embassies that were limited to the 40 feet and all the
8 requirements of an R-1-A neighborhood. But it's
9 designed to look like an apartment building with the
10 four separate units and from what I understand of the
11 Foreign Missions Act, we have to provide them a
12 chancery and embassy which we have on Lot 6. We have
13 to provide the ambassador a home, but we do not have
14 to provide staff housing. There's many staff from a
15 lot of embassies living all across the city in every
16 neighborhood. They're in apartment buildings.
17 They're all over. Are we all of a sudden in a
18 neighborhood going to take down a house and put up
19 four apartment units?

20 So part of our concern is the design of
21 this building which does look more like apartments
22 than it does a single family house.

23 If Hungary was using it before, we had no
24 knowledge of it. It still looked like a single-family
25 house design. So if they had two families in it,

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1 three, nobody questioned it. But this is basically a
2 single-family neighborhood on Tilden Street around
3 there. It's all townhouses, single-family homes.

4 It's not apartment-building looking. And
5 we are very concerned about the tree and slope
6 overlay. Mr. Parsons will remember the bitter fight
7 we had at the Zoning Commission over this overlay
8 which extended probably for a year of hearings, but we
9 are concerned about the number of trees, the
10 impervious surface and maybe it could be scaled back
11 to address some of those concerns and that's --

12 CHAIRMAN GRIFFIS: Excellent. Thank you
13 very much.

14 MR. KLIBANOFF: I have found the document
15 I was looking for.

16 CHAIRMAN GRIFFIS: Indeed.

17 MR. KLIBANOFF: And despite what the
18 lawyer for the Applicant has stated, this would set --
19 we feel this would set a precedent for other embassies
20 and chanceries throughout the city who do border
21 neighborhoods, who do border residences and
22 residentially-zoned properties to use this as
23 justification to buy those and to convert them.

24 As the Applicant has said several times,
25 this property has been used for residential use only

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1 up until this point. it has been used for families to
2 live in. So prior use has always been residential,
3 despite whether it's been privately owned or owned by
4 a foreign government.

5 Also, in regards to the tree and slope
6 overlay, the point of the tree and slope overlay is to
7 or one of the points of the tree and slope overlay is
8 to provide a buffer going into the park, instead of
9 having a sharp dividing line between the park and the
10 residences. And by bringing down these trees, we
11 think that will become more of a sharp dividing and
12 less of sort of a subtle change into the park.

13 Just some numbers from the tree and slope
14 overlay, according to the tree and slope overlay, you
15 can remove three trees from a property that are more
16 than 12 inches in circumference, as long as none of
17 them are more than 75 inches in circumference. They
18 are removing four trees of a total circumference of
19 106 inches. The tree and slope overlay does say they
20 can take down 25 percent or less than 25 percent.
21 This 106 inches, according to their arborist numbers,
22 constitutes 53 percent of the circumference inches of
23 this lot.

24 CHAIRMAN GRIFFIS: Excellent. Thank you.
25 Anything else? Very good, excellent points. Quite a

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1 few of them, I think we all take great notes on them
2 and we will certainly put them as part of our
3 deliberation.

4 Let me clarify a couple of things because
5 you started off with the security issue and I just
6 want to clarify the fact the zoning requirements and
7 the chancery use criterion that we look at of course,
8 Mr. Mlotek will cite the Foreign Missions Act, but I
9 cite the zoning regulations, 1001, and I believe it's
10 .6. It speaks to the criterion that we look to and
11 that is the evaluation analysis of whether the State
12 Department can adequately protect this facility. So
13 it's different and in fact, in my quick mind in
14 looking at this, it actually reinforces that a tunnel
15 for protection and for security reasons on site
16 supports the fact that they have found that there is
17 no element that has arisen, that they would be
18 concerned about their adequacy to protect this area or
19 this facility. So I think they run hand in hand and
20 are not or I haven't seen anything persuasively put
21 forth today that they are in contrast or
22 contradictory.

23 Let me investigate a little bit because in
24 all these cases that we hear, and especially this one,
25 particularly today, you've thrown out this sharp

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1 dividing line from the park, the tree and slope and
2 the buffer. I'm looking at the board L-101 that's up
3 right now and of course, we have the others, 03. Are
4 you indicating that this is some -- there is in actual
5 stark contrast of what's being proposed? This is that
6 it will be -- it will just be so clear that this not
7 at all planted and as a buffer to the park?

8 MR. KLIBANOFF: What I'm contending is
9 that part of the reason for the tree and slope overlay
10 is to protect so that this does not happen. This
11 could be one step along a road that creates something
12 like that, and the tree and slope overlay, as I said,
13 in one respect, is there so that this does not happen
14 in the protections that it gives.

15 CHAIRMAN GRIFFIS: Right, right. I
16 understand what the tree and slope overlay does, but
17 what I'm asking you, you've asserted that this harms
18 this particular property and this transition into the
19 park and I'm not seeing that in the illustrations that
20 are presented today, so I'm trying to understand your
21 position.

22 MR. KLIBANOFF: I'm not saying it creates
23 a sharp divide, but it could contribute towards that
24 being created.

25 CHAIRMAN GRIFFIS: I see.

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1 MR. KLIBANOFF: Because the tree and slope
2 overlay does not want that to happen and if one
3 property is given the exception, other chanceries,
4 embassies that are in that area could use that as
5 precedent and could --

6 CHAIRMAN GRIFFIS: I understand.

7 MR. KLIBANOFF: Because they're protected
8 by it.

9 CHAIRMAN GRIFFIS: So it's your position
10 that this, as proposed, doesn't create the sharp
11 divide, but opens up the door to someone else creating
12 a sharp divide.

13 MR. KLIBANOFF: Or could contribute as a
14 step or start the domino effect along that road.

15 CHAIRMAN GRIFFIS: I see. Okay.
16 Excellent.

17 There it is. Any other questions?

18 (Pause.)

19 Very well, if there's no other questions
20 of the Board. Thank you all very much.

21 MR. KLIBANOFF: Thank you for your time.

22 CHAIRMAN GRIFFIS: Indeed, we appreciate
23 you being down here and presenting this and also
24 providing your timely report to the Board.

25 At this point, let me call those persons

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1 present that would like to provide testimony for the
2 Board. I'm going to call persons in support and also
3 persons in opposition, if they would like to come
4 forward and have a seat.

5 I'm going to ask you, of course, to state
6 your name and address prior to beginning your
7 testimony and then I'm going to ask you if you would
8 just state on the record that you are in support or in
9 opposition or your position of this and then proceed.

10 Excellent. We'll start in the center.

11 MS. SIMONS: My name is Barbara M. Simons.
12 I am here in opposition to the application or part of
13 the application. In other words, we're supporting the
14 ANC, but we also have a separate interest. I'm
15 appearing on behalf of the Forest Hills Citizens
16 Association which is the entity that originally
17 sponsored the Forest Hills tree and slope overlay. In
18 fact, I was the president at the time it was filed.

19 CHAIRMAN GRIFFIS: You submitted a letter
20 in today, is that correct?

21 MS. SIMONS: Yes. Was it distributed?
22 Yes, that was the question I was going to ask. Okay,
23 I did not sign the letter. It's signed by our current
24 president, George Clark. But because I was the
25 president at the time the Forest Hills tree and slope

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1 overlay came into being, and because Mr. Clark
2 couldn't be here today, I was authorized to testify.

3 CHAIRMAN GRIFFIS: Perfect.

4 MS. SIMONS: Preliminarily, I would like
5 to note something which I'm a little hesitant to do,
6 but past experience has proven that sometimes it's
7 better to do it. And that is to express my concern
8 for the procedural irregularity surrounding this case.
9 They were pointed out earlier today. There are at
10 least two procedural irregularities and I am quite
11 concerned about those.

12 I wasn't asked whether I would object or
13 not, but I think I would have.

14 CHAIRMAN GRIFFIS: What are the two?

15 MS. SIMONS: First, the fact that there
16 was perhaps an ex parte contact. I think you
17 explained it fairly well, but I'm concerned about ex
18 parte contacts because I was in a case where that
19 turned out to be the issue in the entire case and it
20 had to be sent back. It was remanded and it had --
21 this wasn't a District of Columbia case. It was a
22 federal case, but it was sent back and remanded and we
23 had to start all over from scratch.

24 CHAIRMAN GRIFFIS: Indeed.

25 MS. SIMONS: And the other procedural

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1 irregularity --

2 CHAIRMAN GRIFFIS: I can tell you, I don't
3 like get calls on my cell phone either.

4 MS. SIMONS: The other one, the more
5 important procedural irregularity is the one that's
6 been pointed out by the State Department. Anyway,
7 I'll move on from there, but I did want to express my
8 concern about those.

9 CHAIRMAN GRIFFIS: Okay.

10 MS. SIMONS: About the trees, as I
11 understood the testimony, 14 trees are going to be
12 removed, a total of 14. And they're going to be
13 replaced by smaller trees, 5-inch caliber and 3-inch
14 caliber. One of the things that we had to decide when
15 we were doing up the tree and slope overlay was, was
16 it sufficient simply to plant small trees to replace
17 these large mature trees that are being taken down and
18 we concluded and we had expert testimony in support
19 that taking down mature trees or planting small trees
20 in their place is not exactly an equivalency.

21 And so when you look at the picture there
22 and I think you said you didn't see the sharp divide
23 between what's there now and going into the park, what
24 you're seeing, I believe, are the trees that are there
25 now. But once you take those big trees down and you

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1 have these little trees, you will see a difference.
2 So I just wanted to point that out, that that is
3 something that you should consider, whether small
4 trees do take the place of large, mature trees.

5 Then I think I heard some testimony about
6 well, a figure of 22 percent was used in connection
7 with the amount of impervious surface. The 22
8 percent, as I understood the testimony, was the amount
9 of the reduction from what was originally proposed to
10 what is now being proposed. They're reducing it by 22
11 percent. But the actual figure of impervious surface,
12 as I understood it, is 60 percent, whereas the tree
13 and slope overlay requires a smaller --

14 CHAIRMAN GRIFFIS: Actually, I think the
15 figure in the application that was submitted is 22
16 percent of Lot 3 would not be green and so we're
17 perhaps taking percentages of pieces and parts, but I
18 think all of it is in there and forgive me if I
19 brought that up.

20 MS. SIMONS: No, that's okay. I mean I
21 hope that these points I'm raising will require you or
22 at least encourage you to read the record very
23 carefully. I'm not necessarily complaining about what
24 conclusions you may reach, although maybe I will
25 eventually, but right now, I just want to raise some

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1 of these points.

2 CHAIRMAN GRIFFIS: Good.

3 MS. SIMONS: The Applicant never asks for
4 an exception to the tree and slope overlay. I want to
5 make it clear that there is a way to ask for an
6 exception.

7 CHAIRMAN GRIFFIS: But wait a minute, I
8 need to make absolutely clear that you understand that
9 you are now giving testimony as part of the FMBZA, not
10 as a --

11 MS. SIMONS: Yes.

12 CHAIRMAN GRIFFIS: Okay.

13 MS. SIMONS: But --

14 CHAIRMAN GRIFFIS: So it wouldn't be
15 appropriate that under our review and under this
16 scenario --

17 MS. SIMONS: Right --

18 CHAIRMAN GRIFFIS: That that would be
19 asked for.

20 MS. SIMONS: Right. What I'm saying is,
21 if there was a problem with the tree and slope
22 overlay, and there is, and I think the Applicant has
23 admitted that they have tried to comply at least with
24 the spirit. I'm saying there is a way to seek an
25 exception to the tree and slope overlay.

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1 CHAIRMAN GRIFFIS: And what's that way?

2 MS. SIMONS: Well, there is a provision in
3 the tree and slope overlay --

4 CHAIRMAN GRIFFIS: To come to the BZA for
5 special exception?

6 MS. SIMONS: Exactly.

7 CHAIRMAN GRIFFIS: Okay.

8 MS. SIMONS: And there are requirements --

9 CHAIRMAN GRIFFIS: Leave it at that. But
10 that would not be appropriate in this case, but we can
11 --

12 MS. SIMONS: No, I'm not saying that you
13 should grant an exception here. I'm saying they
14 didn't comply with the law.

15 CHAIRMAN GRIFFIS: I'm not saying granting
16 or not. You said that there's a procedural difficulty
17 and I'm asserting that there is not.

18 MS. SIMONS: Oh, that wasn't the one. No,
19 the procedural difficulties I was referring to were
20 the two that were brought up earlier.

21 CHAIRMAN GRIFFIS: I'm with you. I won't
22 interrupt you again.

23 MS. SIMONS: Okay. No, this is -- I'm
24 just pointing out that if the Applicant wanted to
25 comply with the tree and slope overlay or the spirit,

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1 they could have sought an exception. There is a
2 provision in the overlay to do so, but never did so.
3 That's all I'm -- I'm just pointing that out.

4 And I agree. This is not the forum for
5 that. There is a forum for the BZA to consider an
6 exception.

7 CHAIRMAN GRIFFIS: Understand me, you
8 don't understand my point.

9 MS. SIMONS: I probably don't.

10 CHAIRMAN GRIFFIS: Perhaps I will have
11 someone talk to you about that, but continue on.

12 MS. SIMONS: Okay, okay. Another point I
13 would like to make is that and it's in the testimony,
14 but I don't know if you've had a chance to read our
15 testimony, but on the second page of the testimony it
16 points out that in application number 16620, the
17 Embassy of the Republic of Azerbaijan was not allowed
18 to alter the building's residential character. And in
19 fact, they weren't really altering the residential
20 character as in this case they are, but they were
21 denied the permission.

22 And then in application 14820, again, the
23 FMBZA denied the application. So it's not like every
24 case, you know, in the past has always been granted
25 the permission or the application has been granted.

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1 Also, I think that the precedent that
2 would be set here and I think the Applicant said it
3 would not be precedent-setting, but I think it would
4 be, because in Forest Hills, we have at least two
5 other parcels that are very large, 1 million feet
6 each, that's Italy and Peru. And if they -- and those
7 are zoned R-1-A.

8 If they wanted to do whatever it is, build
9 whatever they wanted under the guise of well, this is
10 a chancery or an embassy, you can imagine what
11 problems because there was a time when Peru was
12 considering selling its property and they were going
13 to build a bunch -- they, whoever brought the property
14 -- was going to build a bunch of townhouses and there
15 was a lot of consternation in the neighborhood.
16 People were very, very upset. Eventually, they did
17 not sell it, but there was that possibility.

18 Let me see if there was anything else I
19 wanted to cover.

20 Oh, about the Fine Arts Commission, not
21 only did they not notify the ANC, but I would point
22 out that the Fine Arts Commission doesn't deal
23 necessarily with zoning matters. They deal with
24 design concepts. So the fact that they've approved
25 this design-wise, I don't think necessarily should

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1 control what happens before you.

2 Let me see, I think that's it.

3 CHAIRMAN GRIFFIS: Excellent. Thank you
4 very much.

5 MS. SIMONS: Thank you very much.

6 CHAIRMAN GRIFFIS: I absolutely agree with
7 you. What the Commission of Fine Arts does, does not
8 control us. However, it is part of the review process
9 and it is something that is put into the record and we
10 do review that for their criterion of review as the
11 FMBZA is set up and the criterion of our review, one
12 of those portions is historic, as that stepped in
13 historic is not being a Historic District, it is
14 important to us.

15 I appreciate all that you've put in. I
16 note that you have submitted in your written statement
17 or position and you note several concerns and we will
18 take adequate time to read, review and deliberate on
19 this.

20 Are there any questions from the Board?

21 VICE CHAIR MILLER: I just have one
22 question and I haven't read your letter yet, I haven't
23 seen that yet, but are you suggesting at all that
24 replacement with the small trees of the large trees
25 that were taken out is creating some adverse impact on

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1 neighboring property?

2 MS. SIMONS: Yes.

3 VICE CHAIR MILLER: Which property is
4 that?

5 MS. SIMONS: I'm talking about the whole
6 neighborhood. The Forest Hills neighborhood. The
7 reason for the tree and slope overlay was to protect
8 the neighborhood, not just particular houses.

9 VICE CHAIR MILLER: I'm looking at the
10 regulations that we were looking at in general, and it
11 talks about "and not adversely affecting neighboring
12 property." And then I know you were talking about,
13 in general, about the intent and purpose of the tree
14 and slope overlay. And so I just wanted to clarify.
15 So your testimony goes to the general intent and
16 purpose as opposed to some specific adverse impact on
17 a property.

18 MS. SIMONS: Yes.

19 VICE CHAIR MILLER: Okay, thank you.

20 CHAIRMAN GRIFFIS: Anything else? Very
21 well, thank you very much. We do appreciate you being
22 here and presenting that. Let's move ahead, Mr.
23 Sussman.

24 DR. SUSSMAN: My name is Dr. Sussman and
25 I think I'm the individual most immediately affected

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1 by the proposed construction. The building which I
2 own is a conversion of a barn which was known as the
3 Pierce Still House. It was converted to a private
4 dwelling by Harry Carr in 1932. It passed through
5 several hands including Sherman Adams, Eisenhower's
6 assistant, at which time Winston Churchill stayed at
7 the house. And I'm interested in preserving the
8 private character of the house and its historical
9 flavor.

10 Now I am sort of caught at the present
11 time, not between a rock and a hard place, but between
12 the Chinese government, Rock Creek Park, and the
13 Hungarian government. And I don't mind that. What I
14 mind is to preserve my privacy and the value of my
15 property.

16 Now originally when the Hungarians came
17 along to develop this property, I had missed an
18 opportunity to acquire the whole property. I didn't
19 know, I thought it was parkland and it was acquired by
20 a developer who sold it out in stages, first to
21 Eastman, and then to the Hungarian government.

22 And when I gave my assent to the Hungarian
23 construction, some 30 years ago, I did it without
24 hesitation and without restriction. Now what I didn't
25 bargain for was the noisy air conditioning equipment

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1 that would be placed at my end of their building that
2 I wouldn't get any significant screening from their
3 structure, and that the elaborate underground drainage
4 system which I didn't know existed, would by being
5 compromised would give me a basement that would
6 require sump pumps in the future, but that's all gone
7 by the board.

8 What I'm faced with at the present time is
9 something that I've been assured about and I am
10 willing to accept the assurances that are being given
11 me. So I'm withdrawing my objection to this proposed
12 conversion of the building with the understanding that
13 I've been given, the assurance I've been given, that
14 I will have adequate trees planted that will screen me
15 from the present building and from the proposed
16 building and that the air conditioning equipment will
17 be moved from its present unfavorable position to a
18 more distant site where I won't be troubled by it and
19 that the only thing that I would have as a residual
20 concern was how much did all this affect my property
21 value? And I can't get a handle on that, so I have no
22 foundation upon which I can base an objection.

23 I did make a few stabs at this. I asked
24 some realtors to try to give me some understanding
25 about what the proposed new building would do to my

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1 property value and they couldn't come up with
2 anything, so I just have to cast my fate upon the
3 waters and see what happens down the road. But
4 basically, if they will do the screening that they
5 propose to do and they will protect me acoustically,
6 I can't talk in terms of the aesthetics of the
7 building or what it means to the area or what it means
8 in terms of zoning. Those are purviews beyond my
9 ability to make any logical conclusions.

10 So when I filed my original party
11 objection, it was a preliminary statement. I was
12 concerned about property value and noise and
13 screening. I think I've gotten enough assurance to
14 reverse my position in this respect. And as a matter
15 of fact, recladding that building in a way would make
16 the Hungarian building less like a fortification and
17 more like something that fits in aesthetically, so I
18 think that is a satisfactory move.

19 CHAIRMAN GRIFFIS: Excellent statement and
20 I appreciate that concluding remark.

21 The Board takes with great seriousness,
22 the responsibility that you put upon us and that is to
23 maintain your privacy and landscape screening and also
24 to make sure that there is some noise attenuation and
25 placement of the equipment that would reduce that

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1 impact on you. I think you're absolutely correct in
2 asserting that property value and land value is often
3 a more moving target and one can't put a pen
4 essentially in what move it in one direction or the
5 other. So I appreciate your understanding of that.
6 But the others, we take great seriousness in our
7 responsibility in assuring that levels of each be
8 addressed.

9 Are there other questions for Dr. Sussman
10 at this time?

11 (No response.)

12 Very well, we do appreciate you being
13 patient with us and staying to provide that update of
14 your testimony and position.

15 Yes?

16 MS. VURKOVIC: Honorable members of the
17 Board, my name is Nora, Dr. Nora Vurkovic and I'm here
18 to support the application. And a consular of the
19 Embassy of the Czech Republic. The chancery of the
20 embassy is located across the street from the
21 Hungarian Embassy.

22 I'm here to, as I have told you, I am here
23 to express the support. Unfortunately, the Ambassador
24 is out of town, so I am here to express the support of
25 the Embassy of the Czech Republic for the case of the

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1 Republic of Hungary in the matter discussed in this
2 hearing.

3 We were invited or the Embassy of the
4 Czech Republic was invited by the Office of Zoning to
5 this meeting, to this hearing, because we are
6 neighbors of the Hungarian Embassy. Our embassies are
7 destined to cooperate closely. We are neighbors here
8 in Washington, but geographically in Europe, we are
9 also neighbors. We share the same history and we are
10 fellow members of the European Union.

11 It's only natural that the Hungarian
12 Embassy shared with us their plans to renovate the
13 building and they, of course, showed us the project
14 and the plans to develop. We are not architects or
15 landscapers, so we cannot really evaluate this
16 quality. We can only say that the building will be
17 definitely effective, functional and definitely an
18 asset and an improvement of the neighborhood.

19 But most of all, and the reason I am here
20 on behalf of the Embassy is to witness before the
21 Board the responsibility the Embassy of Hungary
22 exercises towards the community here in Washington,
23 the effort, the great care and also resources to
24 comply with all the requirements. We learned all
25 about the procedures needed to get here to this day,

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1 to this hearing. So we are aware of their effort,
2 responsibility and care. We respect that and that is
3 the reason we are here and we want the Board to know
4 that the Embassy of the Czech Republic supports the
5 application.

6 CHAIRMAN GRIFFIS: Thank you very much.
7 And do we have something from you in the record,
8 written?

9 MS. VURKOVIC: Unfortunately not. I
10 apologize. I was --

11 CHAIRMAN GRIFFIS: It's not required.

12 MS. VURKOVIC: I was not aware of the
13 procedures, but I can provide it, of course. I can
14 provide you with the recommendation.

15 CHAIRMAN GRIFFIS: Why don't we have that
16 submitted in, a letter in support of the application,
17 if you wouldn't mind. Very well.

18 MS. VURKOVIC: Absolutely.

19 CHAIRMAN GRIFFIS: Are there others
20 present, persons who have testimony in support or in
21 opposition? This is Application 17481 of the FMBZA.

22 Not noting any others, thank you all very
23 much. We do appreciate it.

24 We don't have any other procedural
25 requirements for us today. Let us -- and Ms. Prince,

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1 if you wouldn't mind coming forward -- let us set a
2 schedule for this as we had laid out. We are going to
3 need to assemble a few documents. The Board has
4 discussed that briefly. Then we will set this for our
5 deliberation and have the entire record provided to
6 Ms. Gallagher for her participation in that.

7 I have in my notes that we are going to
8 one, we've just indicated that we would leave the
9 record open to receive the letter of support as
10 indicated. I am also -- we will have Mr. Mlotek's
11 submitting his letter from the State Department.
12 There was some issue that was brought up, Mr. Parsons
13 asking about the stormwater management plan and also
14 how that might impact or revise the landscape plan.
15 Brief comments on that.

16 Is that something we need in the record,
17 Mr. Parsons, prior to moving ahead to deliberation?

18 MR. PARSONS: Yes, I think that's
19 important, it will also show where it's being
20 discharged into the streets.

21 CHAIRMAN GRIFFIS: Okay, so we're going to
22 need a handle on the schedule when that might able to
23 be discussed in the record. I know it was about a
24 month that was indicated for. I believe that may have
25 been final. I'm not sure we need absolute final plan

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1 of that, but obviously a good design or more than a
2 concept, but a design plan that we might be able to
3 balance and impact.

4 MR. PARSONS: I was also interested in
5 getting a revised landscape plan on the Shoemaker
6 Street side of the chancery building without hurting
7 the elm tree or the roots of the elm tree, excuse me.

8 CHAIRMAN GRIFFIS: And that would be
9 revised to do what? What revisions are you looking to
10 --

11 MR. PARSONS: The idea was to provide more
12 screening for the park across the street and new
13 architecture.

14 CHAIRMAN GRIFFIS: I see. Okay.
15 Difficulties in setting this for decision in June the
16 6th, Ms. Prince? Any difficulties in assembling the
17 information requested Mr. Mlotek?

18 I'll hear from anybody that might have
19 difficulties? Yes.

20 MS. PRINCE: I believe that we can have
21 the stormwater management plan in two weeks, so if we
22 could be on the May agenda, that would be preferable.
23 Maybe that timing is too tight for you.

24 CHAIRMAN GRIFFIS: Two weeks would get you
25 the stormwater management plan, but then we'd need to

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1 have that inputted into the landscape plan, so you
2 could turn it all around in two weeks.

3 MS. PRINCE: Yes, we could.

4 CHAIRMAN GRIFFIS: Are we getting the
5 transcript in two weeks, Mr. Mlotek?

6 Comments on that, May or June?

7 MR. MLOTEK: Mr. Chairman, I don't think
8 you mean the transcript, you mean the letter from the
9 --

10 CHAIRMAN GRIFFIS: Right, I'm not asking
11 for you to comment on the transcript.

12 MR. MLOTEK: Sorry.

13 CHAIRMAN GRIFFIS: On the decision whether
14 --

15 MR. MLOTEK: You mean the letter of
16 support, the standard Department of State letter?

17 CHAIRMAN GRIFFIS: You can make it by the
18 May decision meeting, is that correct?

19 MR. MLOTEK: Yes. And what date is that?

20 CHAIRMAN GRIFFIS: It would be the 2nd of
21 May.

22 MS. BAILEY: Mr. Chairman, if it's
23 appropriate, we do need to get the transcript back and
24 give Ms. Gallagher a little time to read it, so Mr.
25 Parsons will be here on May 9th. I don't know if

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1 that's a convenient time, but it's just something for
2 consideration.

3 CHAIRMAN GRIFFIS: I have no difficulty
4 with that. We could set it for special meeting on the
5 9th of May. Any scheduling problems with that?

6 Excellent. Okay, let's do it. Let's just
7 set a submission, Ms. Bailey, if you wouldn't mind.

8 MS. BAILEY: I'm sorry, Mr. Chairman. I'm
9 showing -- that's right -- May 9th -- sorry, May 1st,
10 sir, May 1st or May 2nd. Is that appropriate, Mr.
11 Chairman?

12 CHAIRMAN GRIFFIS: I think I have -- well,
13 is there a possibility of getting it on the 27th, Ms.
14 Prince?

15 MS. PRINCE: yes.

16 CHAIRMAN GRIFFIS: I'd rather have that,
17 Ms. Bailey.

18 MS. BAILEY: April 27th, sir? Okay.

19 CHAIRMAN GRIFFIS: Excellent. Okay,
20 anything else then? Clarification on schedule,
21 procedures, yes?

22 MS. PRINCE: I just had some brief closing
23 remarks if I could indulge your patience.

24 CHAIRMAN GRIFFIS: Fabulous. Absolutely.

25 MR. MLOTEK: Just before we move to that,

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1 just to clarify this, the submission date is not --
2 submission date remains May 2nd in view of or --

3 MR. PARSONS: April 27th.

4 CHAIRMAN GRIFFIS: 27th is what I'd like
5 at 3 o'clock in the Office of Zoning, unless that's a
6 problem. I can push it to the second. When we push
7 it to the 2nd, it's limiting the time of preparation
8 for the member that was not here.

9 MR. MLOTEK: Right. Okay. We'll do it.

10 CHAIRMAN GRIFFIS: Okay. Excellent.

11 MS. PRINCE: Brief closing comments, and
12 I do appreciate your patience. This is an important
13 project for the Republic of Hungary. It will provide
14 a long-needed renovation. It involves a generous
15 landscape plan, a whole new facade on the existing
16 building and I believe it will greatly enhance the
17 appearance of the site. Just to reiterate, the
18 existing square is 89 percent nonresidential use.
19 There's a total of 38,000 square feet of building area
20 in the square; 34,000 of it is non-residential. That
21 should alleviate some of your concerns about the
22 proposed use of Lot 3.

23 In terms of the tree and slope overlay
24 which is not yet in effect, we have done our very best
25 to comply with the overlay. The overlay, contrary to

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1 what the ANC Commissioner said, the overlay requires
2 50 percent lot occupancy, I'm sorry, 50 percent
3 impervious surface as a maximum. We're at 60 percent.
4 We reduced our impervious surface area to address the
5 spirit of the overlay and the 22 percent that was
6 referenced, as you said, is the amount of area on the
7 site that is not green.

8 We're very pleased to get you the
9 additional post-hearing materials that you've
10 requested. In terms of the landscape plan, we are
11 putting back more inches of circumference than we are
12 taking away. We are putting back 150 feet more inches
13 of circumference of tree than we are taking away. I
14 thought that might be a helpful number for you.

15 And finally, sometimes these hearings are
16 not just about what we hear, it's about what we don't
17 hear. And this is a chancery case, yet we've not
18 heard a single complaint about the operation of the
19 Hungarian Embassy on this site for the past 30 years.
20 We haven't heard what you usually hear in cases of
21 this nature. We haven't heard about parking problems.
22 We haven't heard about noise. We haven't heard about
23 loud parties.

24 We've heard from the most immediately
25 affected neighbor. He's not mentioned any adverse

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1 impacts that flow from the operation of the chancery
2 on the site. And I would urge you to take that into
3 consideration as you evaluate the application and
4 again, we thank you for your time.

5 Excellent. thank you very much, Ms.
6 Prince. We do appreciate that, and all of the
7 information you've already submitted into the record.
8 And that that's been provided today.

9 One question, of course, that I'd like you
10 to expound on in your conclusionary remarks is that
11 the tree and slope overlay is not in effect yet. I'll
12 give you an opportunity to address the Board. It's
13 Ms. Prince's conclusion, so this will be the last word
14 on this.

15 MS. SIMONS: Even if it's incorrect?

16 MS. PRINCE: The final rulemaking is not
17 yet in effect. Under the setdown rule, the tree and
18 slope overlay needs to be considered for permit
19 applications governing this site and we have looked at
20 that, but the final overlay is not in effect, the
21 final rulemaking has not been adopted. There's a 2002
22 version that has been circulating for the past four
23 years. The Commission took proposed action on yet a
24 different version and that version has not been
25 adopted by the Commission. That's my point.

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1 CHAIRMAN GRIFFIS: Okay, thank you very
2 much and we'll certainly look into that and appreciate
3 you bringing that up to our attention.

4 With that, I thank you all. We've
5 accomplished quite a bit, although it is after noon.
6 This would conclude the proceedings of the FMBZA at
7 this time and we will draw to conclusion.

8 With that, we're going to take just a five
9 minute break. At the end of five minutes I will call
10 to session our public hearing of the 11th of April.
11 I'll allow this Applicant to remove their information
12 and I would ask that the next on our schedule begin to
13 set up, so we can get directly into it.

14 (Whereupon, at 12:14 p.m., the hearing was
15 concluded.)

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